MONTANA LEGISLATIVE HISTORY

Chapter 562 19 99

Bill H 182 S _____ Original bill & history ✓ C

H. Committee on State Admin			S. Committee on State Admin		
Hearing Date(s)	1-22	✓ C	Hearing Date(s)	3 5	✓ C
Exec Action	2/10	X C	Exec Action	3/17	X C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

3/16	Hearing		
	Died in Standing Committee		

HB 182 Introduced by Ahner *LC0110 Drafter: Niss*

Generally Revise Laws Relating to Public Retirement;...

By Request of Public Employees' Retirement Board

12/24	Introduced		
1/04	1st Reading		
1/04	Referred to State Administration		
1/04	Fiscal Note Requested		
1/09	Fiscal Note Received		
1/11	Fiscal Note Printed		
1/11	Fiscal Note Signed		
1/22	Hearing		
2/10	Committee Executive Action--Bill Passed as Amended	17	0
2/11	Committee Report--Bill Passed as Amended		
2/13	2nd Reading Passed	93	5
2/15	3rd Reading Passed	96	4
	Transmitted to Senate		
2/23	Referred to State Administration		
3/05	Hearing		
3/18	Committee Executive Action--Bill Concurred as Amended	5	0
3/18	Committee Report--Bill Concurred as Amended		
3/19	2nd Reading Concurred	44	0
3/20	3rd Reading Concurred	42	0
	Returned to House with Amendments		
4/13	2nd Reading Senate Amendments Not Concurred	94	2
4/13	Conference Committee Appointed		
4/16	Hearing		
4/16	Conference Committee Report Received		
4/20	2nd Reading Conference Committee Report Adopted	97	0
4/21	3rd Reading Conference Committee Report Adopted	95	5
	Senate		
4/14	Conference Committee Appointed		
4/16	Conference Committee Report Received		
4/16	2nd Reading Conference Committee Report Adopted	49	0
4/17	3rd Reading Conference Committee Report Adopted	49	0
4/21	Sent to Enrolling		
4/28	Returned from Enrolling		
4/29	Signed by Speaker		
4/29	Signed by President		
4/30	Transmitted to Governor		
5/06	Signed by Governor		
5/07	Chapter Number Assigned		
	Chapter Number 562		
	Effective Date: 7/01/1999 - All Sections		

HB 183 Introduced by Dale *LC0195 Drafter: Everts*

Generally Revise the Opencut Mining Act and the Metal Mine Reclamation Laws;...

HOUSE BILL NO. 182

INTRODUCED BY AHNER C

BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO PUBLIC RETIREMENT; PROVIDING FOR THE PURCHASE OF SERVICE FOR PERIODS OF ILLNESS OR INJURY BY MEMBERS OF THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM AND THE SHERIFFS' RETIREMENT SYSTEM; PROVIDING THAT A PRESUMPTION OF ABANDONMENT IS INAPPLICABLE TO MONEY IN A RETIREMENT ACCOUNT; PROVIDING THAT A STATUTORY REVOCATION THROUGH DIVORCE OR CONTRACT OF THE DISPOSITION OF PROPERTY IS INAPPLICABLE TO FUNDS GOVERNED BY A RETIREMENT SYSTEM LAW; AMENDING SECTIONS 2-15-1009, 7-32-4132, 19-2-302, 19-2-303, 19-2-403, 19-2-404, 19-2-406, 19-2-407, 19-2-408, 19-2-503, 19-2-505, 19-2-506, 19-2-507, 19-2-602, 19-2-701, 19-2-703, 19-2-801, 19-2-802, 19-2-1101, 19-3-103, 19-3-201, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-505, 19-3-509, 19-3-512, 19-3-521, 19-3-904, 19-3-1005, 19-3-1015, 19-3-1103, 19-3-1106, 19-3-1204, 19-3-1210, 19-3-1501, 19-3-1605, 19-5-102, 19-5-401, 19-5-503, 19-5-701, 19-5-802, 19-5-901, 19-6-102, 19-6-503, 19-6-505, 19-6-612, 19-6-709, 19-6-710, 19-6-801, 19-6-802, 19-6-803, 19-7-102, 19-7-402, 19-7-503, 19-7-711, 19-7-802, 19-7-804, 19-7-1001, 19-8-102, 19-8-501, 19-8-712, 19-8-801, 19-8-901, 19-8-902, 19-8-1002, 19-8-1105, 19-9-103, 19-9-405, 19-9-702, 19-9-703, 19-9-706, 19-9-1007, 19-9-1009, 19-9-1101, 19-9-1102, 19-13-103, 19-13-104, 19-13-404, 19-13-604, 19-13-605, 19-13-607, 19-13-704, 19-13-903, 19-13-1007, 19-13-1010, 19-17-102, 19-17-106, 19-17-108, 19-17-204, 19-19-201, 19-19-205, 70-9-803, AND 72-2-814, MCA; REPEALING SECTION 19-9-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1009, MCA, is amended to read:

"**2-15-1009. Public employees' retirement board -- terms -- allocation.** (1) There is a public employees' retirement board.

(2) The board consists of six members appointed by the governor. The members are:

(a) three public employees who are active members of a public retirement system (not more

than one of these members may be an employee of the same department);

(b) one retired public employee who is ~~an inactive~~ a member of the public employees' retirement system; and

(c) two members at large.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124."

Section 2. Section 7-32-4132, MCA, is amended to read:

"**7-32-4132. Payment of partial salary amount of officer injured in performance of duty.** (1) A member of a municipal law enforcement agency of a ~~first- or second-class~~ municipality contracting for retirement coverage pursuant to 19-9-207 who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the member of the law enforcement agency must be unable to perform the member's duties as a result of the injury."

Section 3. Section 19-2-302, MCA, is amended to read:

"**19-2-302. Applicability.** This chapter applies to the provisions and administration of the retirement ~~systems under~~ plans established in chapters 3, 5 through 9, and 13 of this title and known as retirement systems."

Section 4. Section 19-2-303, MCA, is amended to read:

"**19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional

contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the ~~division~~ board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

~~(16) "Division" means the public employees' retirement division of the department of administration.~~

~~(17)~~(16) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer.

~~(18)~~(17) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

~~(19)~~(18) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

~~(20)~~(19) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

~~(21)~~(20) "Inactive member" means a member who is not an active or retired member.

~~(22)~~(21) "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

~~(23)~~(22) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(24)~~(23) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

~~(25)~~(24) "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

~~(26)~~(25) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

~~(27)~~(26) "Regular contributions" means contributions required from members under a retirement

system.

~~(28)~~(27) "Regular interest" means interest at the rate set from time to time by the board.

~~(29)~~(28) "Retirement" or "retired" means the status of a member who has been terminated from service for at least 30 days and has received and accepted a retirement benefit from a retirement system.

~~(30)~~(29) "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

~~(31)~~(30) "Retirement system" ~~or~~, "system", or "plan" means one of the public employee retirement ~~systems~~ plans enumerated in 19-2-302 and known as retirement systems.

~~(32)~~(31) "Service" means employment of an employee in a position covered by a retirement system.

~~(33)~~(32) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(34)~~(33) "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(35)~~(34) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

~~(36)~~(35) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(37)~~(36) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(38)~~(37) "Vested member" or "vested" means a member or the status of a member who has

attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(39)~~(38) "Written application" means a written instrument, ~~duly executed~~ specified by the board, properly executed, and filed with the board ~~and containing~~, that contains all the information required by the board, including ~~such proofs of age as~~ documentation the board considers necessary."

Section 5. Section 19-2-403, MCA, is amended to read:

"**19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial ~~tables~~ rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation,

including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in an account in the state special revenue fund and must be appropriated to the board for the benefit of participants of retirement systems administered by the board.

(11) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records.

(12) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11) or the contested case procedure of the Montana Administrative Procedure Act."

Section 6. Section 19-2-404, MCA, is amended to read:

"**19-2-404. Appointment and compensation of administrative staff.** The board shall hire and fix the compensation of an ~~administrator~~ executive director and other necessary employees to assist the board in administering the retirement systems. The compensation of the ~~administrator~~ executive director and employees must be established in accordance with Title 2, chapter 18."

Section 7. Section 19-2-406, MCA, is amended to read:

"**19-2-406. Determination of disability by board -- compliance with federal law -- conversion to service retirement benefit -- rules.** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with

the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum age required for normal service retirement. The board shall notify the member in writing as to the change in status."

Section 8. Section 19-2-407, MCA, is amended to read:

"**19-2-407. Report by ~~division~~ board to governor.** As soon as practical after the close of each fiscal year, the ~~division~~ board shall file with the governor a report of its work for that fiscal year. The report must include a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. The report must also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of each system."

Section 9. Section 19-2-408, MCA, is amended to read:

"**19-2-408. Administrative expenses.** (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system, except as provided in subsection (3). Before the fiscal yearend closing, the board shall compute the administrative expenses attributable to each retirement system administered by the board for the immediately preceding fiscal year and transfer that amount from each retirement system's pension trust fund to the pension trust fund of the public employees' retirement system. The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total retirement benefits paid.

(3) On January 1 of each year, each employer under the public employees' retirement system shall contribute on behalf of each member then in its service a membership fee of $1 in addition to

other required contributions. The fees must be used for the purpose of defraying the administrative expense of chapters 2, 3, 5 through 9, and 13 and this chapter.

(4) The board may assess and ~~the division may~~ collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title."

Section 10. Section 19-2-503, MCA, is amended to read:

"**19-2-503. Management of pension trust funds.** The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by ~~it~~ the board as provided in this chapter.

(3) The state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds."

Section 11. Section 19-2-505, MCA, is amended to read:

"**19-2-505. Restrictions on use of funds.** (1) Except as provided in this section, a member or an employee of the department or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the ~~division~~ board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds.

(2) The assets of the retirement systems may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board."

Section 12. Section 19-2-506, MCA, is amended to read:

"**19-2-506. Payment of contributions by employers -- accompanying reports -- penalty.** (1) At a time prescribed by the rules of the board, each employer shall remit to the ~~division~~ board all contributions required of the employer and its employees under retirement systems subject to this chapter on the basis of covered compensation paid during the previous pay period.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) Employers shall submit reports ~~of their covered payroll and contributions remitted~~ to the board, as the board requires by rule, of compensation paid to both member and nonmember employees.

(4) The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death. The chief administrative officer shall furnish additional information concerning the members that the board may require in the administration of the retirement systems, including the services of the employer's office and departments that the board may request in connection with claims by members for benefits under the retirement systems."

Section 13. Section 19-2-507, MCA, is amended to read:

"**19-2-507. Transfer between funds.** Any pension trust fund out of which payments are made under the provisions of this title may be reimbursed to the extent of the payments by transfer of a sufficient sum for the reimbursement from another pension trust fund or funds under the control of the ~~division~~ board. ~~The division shall certify to the department the amounts to be transferred and the funds from and to which the transfer is to be made, and the division shall make the transfer as directed in the certificate.~~"

Section 14. Section 19-2-602, MCA, is amended to read:

"**19-2-602. Refund of member's contributions on termination of service.** (1) Except as provided in this section, ~~any~~ and upon approval by the board of a written application of a member, a member

whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions ~~at the member's request~~.

(2) Upon the written ~~request~~ application of a terminating member, the ~~division~~ board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the ~~division~~ board. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written ~~request~~ application, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The ~~request~~ application, if timely submitted, is sufficient authority for the ~~division~~ board to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written ~~request~~ application."

Section 15. Section 19-2-701, MCA, is amended to read:

"**19-2-701. Service credit.** (1) Service credit for all covered employment with each employer will be credited to a retirement system on a cumulative basis for all purposes, including but not limited to calculation of benefits and application of any maximum hour restrictions, limitations, or

requirements. A member may not be credited with more than full-time service credit as a result of this cumulation of service credit. Subject to the provisions of chapters 3, 5 through 9, and 13, a member must receive 1 month of service credit for each full month of service under rules adopted by the board.

(2) Service credits must be used in calculating a retirement or survivorship benefit.

(3) A retired member is not eligible to earn service credit."

Section 16. Section 19-2-703, MCA, is amended to read:

"**19-2-703. No duplication of benefits for same period of service.** A period of service of the member may not be credited in more than one retirement system enumerated in 19-2-302 for purposes of calculation of retirement ~~allowances~~ benefits."

Section 17. Section 19-2-801, MCA, is amended to read:

"**19-2-801. Designation of beneficiary.** In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the ~~division~~ board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the ~~division~~ board."

Section 18. Section 19-2-802, MCA, is amended to read:

"**19-2-802. Effect of no designation or no surviving designated beneficiary.** (1) If a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit ~~accrued but~~ not received prior to the ~~statutory or designated beneficiary's~~ member's or payment recipient's death. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the ~~retirement division~~ board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

NEW SECTION. **Section 19. Uniform Unclaimed Property Act and probate and nonprobate transfer statutes superseded.** (1) If a provision of this chapter conflicts with a provision of the Uniform Unclaimed Property Act, Title 70, chapter 9, part 8, the provision of this chapter supersedes the conflicting provision of Title 70, chapter 9, part 8.

(2) If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

Section 20. Section 19-2-1101, MCA, is amended to read:

"**19-2-1101. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive

the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 21. Section 19-3-103, MCA, is amended to read:

"**19-3-103. Retirement system created.** A retirement ~~system~~ plan is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system. The ~~system~~ plan is governed by the provisions of chapter 2 and this chapter."

Section 22. Section 19-3-201, MCA, is amended to read:

"**19-3-201. Contracts with political subdivisions.** (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the

retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, ~~not less than~~ within 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract.

(b) The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer must become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the retirement system is compulsory for all employees who are included under the contract and who are hired after the effective date of the contract.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement coverage.

(b) All employees covered under the retirement system ~~shall receive~~ must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, ~~not less than~~ within 20 days after the approval of the resolution by the employees, may adopt by a 2/3 majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency."

Section 23. Section 19-3-319, MCA, is amended to read:

"**19-3-319. State contributions for local government and school district employers.** The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation of members employed by local government entities and school districts on and after July 1, 1997. The ~~division~~ board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payment is statutorily appropriated as provided in 17-7-502."

Section 24. Section 19-3-401, MCA, is amended to read:

"**19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as otherwise provided in this chapter, all employees shall become members on the first day of service. Each employer shall file with the board information affecting their employees' status as members of the retirement system as the board may require.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) ~~Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.~~ A member who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member who terminates one service but remains in another service or subsequently reenters service is an active member.

(5) Time during which an employee of a school district is absent from service during official

vacation is counted as service in determining eligibility for membership under this chapter."

Section 25. Section 19-3-403, MCA, is amended to read:

"**19-3-403. Exclusions from membership.** The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement ~~allowances~~ benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of

qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credited service for the excluded service under the provisions of 19-3-505."

Section 26. Section 19-3-412, MCA, is amended to read:

"**19-3-412. Optional membership.** (1) The following employees in covered employment may become members of the retirement system at their option at any time during their employment in a covered position by filing a membership card with the board:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) ~~part-time~~ employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment ~~covered by~~ with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes in counties of the third, sixth, and seventh class.

(2) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement. An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.

(3) An employee who declined optional membership but later becomes a member may qualify service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Qualification of service pursuant to this subsection must comply with 19-3-505.

(4) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(5) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(6) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 27. Section 19-3-505, MCA, is amended to read:

"**19-3-505. Qualification of previous employment with employer.** (1) Subject to the provisions of this section, ~~any person~~ a member who has employment for which optional membership was declined or employment with an employer ~~that is not service~~ prior to the employer's contract coverage may ~~convert~~ request to qualify all or a portion of the employment ~~to~~ as membership service by filing written ~~notice~~ application with the board.

(2) (a) ~~The person~~ If the board approves the application, the member shall pay to the ~~retirement system~~ board the sum of the amount that the ~~person~~ member and the ~~person's~~ member's employer would have contributed during the period of ~~service~~ employment ~~converted~~ if the ~~employer~~ employment had been ~~an employer~~ covered by the retirement system and the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(b).

(b) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary

information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests.

(4) Payment may be made in one sum at the time of filing notice or by making additional contributions on an installment basis before retirement. Failure to make regular monthly payments in any month in which the member receives normal compensation forfeits the person's right to make any further installment payments, unless permission is granted by the board."

Section 28. Section 19-3-509, MCA, is amended to read:

"**19-3-509. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify as service in this retirement system all or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the ~~division~~ board shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. The board may grant service credit upon contribution by the employee of the actuarial cost of granting this service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 29. Section 19-3-512, MCA, is amended to read:

"**19-3-512. Qualification of service from other public retirement systems.** (1) A member with 5 or more years of membership service in the public employees' retirement system may qualify:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not qualify more than 5 years of service under this section. To qualify this service, a member shall:

(a) at any time before retirement make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board based on the most recent actuarial valuation of the system.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be~~:~~

~~(a) credited in any other retirement system under Title 19; or~~

~~(b)~~ used to qualify a member to purchase military service under 19-3-503.

(5) Service qualified under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the accumulated contributions made to qualify the service."

Section 30. Section 19-3-521, MCA, is amended to read:

"**19-3-521. Service credit for legislative members.** A member of the legislature of Montana must be credited with membership service for that portion of each year for which the member pays

~~normal~~ regular contributions."

Section 31. Section 19-3-904, MCA, is amended to read:

"**19-3-904. Amount of service retirement benefit.** ~~(1)~~ The monthly amount of retirement benefit payable to a member following service retirement is the greater of subsection (1)~~(a)~~ or ~~(1)(b)~~ (2) as follows:

~~(a)~~(1) one fifty-sixth of the member's final average salary multiplied by the number of years of the member's total service credit; or

~~(b)~~(2) a monthly ~~annuity~~ benefit that is the actuarial equivalent of double the member's ~~accumulated~~ regular contributions plus regular interest.

~~(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1501, the member's beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day the member's retirement allowance commenced over the total of the retirement allowance payments made to the retired member.~~"

Section 32. Section 19-3-1005, MCA, is amended to read:

"**19-3-1005. Application for disability retirement benefit.** The board shall grant a disability retirement benefit to any member who has fulfilled the eligibility requirements of 19-3-1002 and filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within 4 months after the member's ~~discontinuance of~~ termination from service unless the member is disabled continuously from the date of ~~discontinuance of~~ termination from service to the date of the application."

Section 33. Section 19-3-1015, MCA, is amended to read:

"**19-3-1015. Medical examination of disability retiree -- cancellation and reinstatement.** (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to

perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines the member is not incapacitated or if the member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may ~~request~~ make a written application to the board to request the board to reconsider its action. The ~~request~~ written application for reconsideration must be made ~~in writing~~ within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer terminates any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit."

Section 34. Section 19-3-1103, MCA, is amended to read:

"**19-3-1103. Disability benefit reduced by earnings -- change in retirement status.** (1) (a) If the recipient of a disability retirement benefit engages in a gainful occupation during any month other than

in a position covered by the retirement system, the amount of the recipient's retirement benefit for that month must be reduced to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the amount of the recipient's monthly compensation at the time of the recipient's retirement.

(b) ~~For the purpose of calculating a reduction under subsection (1)(a), the~~ The board, ~~at~~ upon the ~~request~~ written application of a recipient of a disability retirement benefit, may adjust the recipient's monthly compensation as it was at the time of retirement by an inflationary factor if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

(2) At the request of a recipient of a disability retirement benefit who is age 60 or older, the board may grant service retirement status to the recipient without recalculating the recipient's monthly benefit.

(3) Benefit adjustments granted by the legislature may not be included in calculations required under this section."

Section 35. Section 19-3-1106, MCA, is amended to read:

"**19-3-1106. Limited reemployment -- reduction of service retirement benefit upon exceeding limits -- exception.** (1) A retired member under 65 years of age who is receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed 640 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 640-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 640 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 640-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized final average salary, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall ~~report~~ certify to the board the number of hours worked by the retiree and

the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) A retired member 70 1/2 years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3)."

Section 36. Section 19-3-1204, MCA, is amended to read:

"**19-3-1204. Survivorship benefit elected by beneficiary.** (1) A designated beneficiary eligible to receive a lump-sum death payment may elect, by written application, a survivorship benefit instead, if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of membership service.

(b) The designated beneficiary is a natural person.

(c) The designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the lump-sum death payment.

(2) The designated beneficiary of a vested member may elect to receive a survivorship benefit in lieu of a lump-sum payment of the member's account.

~~(2)~~(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

Section 37. Section 19-3-1210, MCA, is amended to read:

"**19-3-1210. Death payments to designated beneficiaries of retired members.** If a retired member ~~receiving a regular retirement benefit~~ dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary must be paid the ~~excess~~ amount, if any, of the

member's accumulated contributions ~~on~~ calculated as of the day ~~that~~ the member's retirement ~~benefit commenced over~~ minus the total of ~~the~~ any retirement ~~benefit payments made to the retired member~~ benefits already paid from the member's account."

Section 38. Section 19-3-1501, MCA, is amended to read:

"**19-3-1501. Optional forms of benefits.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who makes an election must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to the contingent annuitant whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2--a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3--a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4--upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, then the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written ~~request~~ application to the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of

the divorce settlement.

(b) Upon receipt of the ~~request~~ written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 39. Section 19-3-1605, MCA, is amended to read:

"**19-3-1605. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 40. Section 19-5-102, MCA, is amended to read:

"**19-5-102. Judges' retirement system established.** There is a retirement ~~system~~ plan known as the judges' retirement system, which is governed by the provisions of chapter 2 and this chapter."

Section 41. Section 19-5-401, MCA, is amended to read:

"**19-5-401. Payments into pension trust fund.** All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and money in the pension trust fund must be paid to the ~~division~~ board, which shall credit the payments to the fund. These funds may be commingled with other pension trust funds of the ~~division~~ board, but separate accounts must be maintained for the judges' retirement system."

Section 42. Section 19-5-503, MCA, is amended to read:

"**19-5-503. Involuntary retirement benefit.** (1) If a member is involuntarily discontinued from service after having completed 5 years of membership service but before reaching retirement age, the member shall, upon filing an application in the manner prescribed by the board, be paid an involuntary retirement benefit of equivalent actuarial value to the service retirement benefit payable under 19-5-502 then standing to the member's credit.

(2) ~~If a member elected or appointed to office prior to July 1, 1983, is involuntarily discontinued from service after having earned at least 12 years of service credit but before reaching service retirement age, the member must, upon filing an application in the manner prescribed by the board, be paid the service retirement benefit provided for in 19-5-502.~~

~~(3)~~ If a member elected or appointed to office after July 1, 1983, is ~~involuntarily~~ discontinued from service after having earned at least 12 years of service credit but before reaching service retirement age, the member may apply for and receive ~~an involuntary~~ a retirement benefit that is the actuarial equivalent of benefits pursuant to subsection (1)."

Section 43. Section 19-5-701, MCA, is amended to read:

"**19-5-701. Optional forms of benefits.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects, must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit payable to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2--a continuation of the reduced amount after the death of the initial payee and

payable during the lifetime of the named contingent annuitant;

(b) Option 3--a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4--upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written application to the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 44. Section 19-5-802, MCA, is amended to read:

"**19-5-802. Payments in case of death from other causes.** (1) If a retired member ~~who is~~ not covered under 19-5-901 ~~and who did not choose an option 2, 3, or 4 form of retirement benefit payment~~ dies without designating a contingent annuitant under 19-5-701 ~~dies before receiving payments equal to the present value of the member's retirement benefit as it was at the time of the member's retirement, the balance must be paid to,~~ the member's designated beneficiary ~~in a lump sum~~ must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account. At the designated beneficiary's request, the lump sum may be paid as an actuarially

equivalent annuity that will not be subject to increases for any purpose.

(2) ~~Upon the death of a retiree who did not choose an option 2, 3, or 4 form of retirement benefit payment~~ If a retired member covered under 19-5-901 dies without designating a contingent annuitant under 19-5-701 ~~and who is covered under 19-5-901~~, the member's designated beneficiary must be paid the ~~unpaid balance of the retiree's benefit. The benefit must be calculated by subtracting the total benefits paid to the member during the member's lifetime from the member's total amount of contributions and interest on account as that amount was on the day that the member retired~~ amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) If a member dies before reaching retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement options provided in 19-5-503."

Section 45. Section 19-5-901, MCA, is amended to read:

"**19-5-901. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ commencement date is at least 36 months prior to January 1 of the

year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member or benefit recipient either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998.

(4) The board shall adopt rules to administer the provisions of this section."

Section 46. Section 19-6-102, MCA, is amended to read:

"19-6-102. Highway patrol officers' retirement system established. There is a retirement ~~system~~ plan known as the highway patrol officers' retirement system, which is governed by the provisions of chapter 2 and this chapter."

Section 47. Section 19-6-503, MCA, is amended to read:

"19-6-503. Early retirement benefit for member discontinued from service other than for cause. If a member is discontinued from service other than for cause after having completed 5 years of membership service but before reaching retirement age, the member must, upon filing a written application with the ~~division~~ board, be paid an early retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60."

Section 48. Section 19-6-505, MCA, is amended to read:

"19-6-505. Payment of retirement benefits. (1) The service retirement benefit must be paid to the retired member for the remainder of the member's life.

(2) Upon the retired member's death, the retirement benefit must be paid to the member's surviving spouse, if there is one.

(3) (a) If upon the retired member's death there is no surviving spouse or if the spouse dies, the retirement benefit must be paid as provided in subsection (3)(c) to the retired member's child, if there is one, for as long as the child remains a dependent child.

(b) If there is more than one dependent child, the retirement benefit must be paid as provided in subsection (3)(c) to the children collectively. When a child is no longer a dependent child, the pro

rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If ~~upon the~~ a retired ~~member's death there is no~~ member dies without a surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-2-801, the designated beneficiary must be paid ~~an~~ the amount ~~equal to~~, if any, of the retired member's accumulated contributions ~~less any~~ minus the total of any retirement benefits already paid ~~to the member before the member's death~~ from the member's account.

(5) If the retired member did not designate a beneficiary or if the beneficiary predeceased the retired patrol officer, the amount provided in subsection (4) must be paid to the member's estate."

Section 49. Section 19-6-612, MCA, is amended to read:

"19-6-612. Medical examination of disability retiree -- cancellation of benefit. (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may submit a written application to the board to request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is

canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review."

Section 50. Section 19-6-709, MCA, is amended to read:

"**19-6-709. (Temporary) Supplemental benefits for certain retirees.** (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability or survivorship benefit under 19-6-601 or 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) (a) An amount equal to 25 cents of each motor vehicle registration fee provided for in 61-3-321(5) must be paid from the general fund to the pension trust fund at the end of each fiscal year. The payment is statutorily appropriated, as provided in 17-7-502, to the pension fund for

payment of benefits to eligible recipients. The total funds must be distributed by the ~~division~~ board in lump-sum payments to eligible recipients along with their normal retirement benefit payment.

(b) The lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(iii) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system.

(5) Every 10 years following July 1, 1991, the ~~division~~ board shall review the size of the additional fee collected under 61-3-321(5) and paid to the pension trust fund in accordance with subsection (4)(a) and recommend to each legislature following the ~~division's~~ board's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section."

Section 51. Section 19-6-710, MCA, is amended to read:

"**19-6-710. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or

more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 52. Section 19-6-801, MCA, is amended to read:

"**19-6-801. Election to qualify military service.** (1) A member with 15 years or more of service credit with the Montana highway patrol may, at any time prior to retirement, make a written election with the ~~division~~ board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-705.

(2) To qualify this service:

(a) a member not covered by 19-6-710 shall contribute to the account the amount determined by the ~~division~~ board to be due based on the member's compensation and regular contribution rate as of the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not qualify more of this service than the member has service with the Montana highway patrol in excess of 15 years.

(b) a member covered by 19-6-710 shall contribute the actuarial cost of the service credit based on the most recent actuarial valuation of the system."

Section 53. Section 19-6-802, MCA, is amended to read:

"**19-6-802. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service credit in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the highway patrol officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement system, according to the most recent actuarial valuation.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This employment may not be credited in more than one retirement system under Title 19.~~"

Section 54. Section 19-6-803, MCA, is amended to read:

"**19-6-803. Election to qualify law enforcement service performed in another state.** (1) Except

as provided in subsections (4) through (6), a member with 5 years or more of membership service in the retirement system may qualify 1 year of out-of-state law enforcement employment for each year of service credit under the retirement system, up to a maximum of 5 years, provided that the member is not eligible to receive a retirement benefit for that out-of-state law enforcement employment.

(2) To qualify this service, a member shall:

(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the retirement system, as determined by the board, based on:

(i) the member's compensation for the 12 months immediately preceding the date of the member's election to cover the service under the retirement system; and

(ii) the ~~total contribution~~ actuarial rate in effect at the time of purchase of service.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be~~:~~

~~(a) credited in any other retirement system under Title 19; or~~

~~(b)~~ used to qualify a member to purchase military service under 19-6-801.

(5) Service qualified under this section may not be used in calculating a member's retirement benefit unless the last 5 years of service credit were earned under the retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the contributions made to qualify the service.

(6) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years."

NEW SECTION. **Section 55. Absence due to illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined by the board to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) After returning to service and while still in service, a member desiring service credit for the period of time referred to in subsection (1) shall file with the board a written application to pay the contributions under subsection (3).

(3) (a) A member eligible to earn service credits pursuant to subsection (1) shall contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the member's period of absence on the basis of the member's compensation immediately prior to the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to service to the date the member contributes for the period of absence.

(b) If a member elects to contribute under subsection (3)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (3)(a) and shall pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (3)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions have been refunded pursuant to 19-2-602. The member loses the right to contribute for the period of time during which retirement benefits have been received if the member retires during the absence.

Section 56. Section 19-7-102, MCA, is amended to read:

"**19-7-102. Sheriffs' retirement system established.** A retirement ~~system~~ plan is established ~~for Montana members, which is~~ and known as the sheriffs' retirement system. ~~It is an actuarial reserve system for the payment of death, disability, and retirement benefits to members and to the beneficiaries of the members to provide for themselves and their dependents in the case of disability or death and upon retirement from active duty.~~ The ~~system~~ plan is governed by the provisions of chapter 2 and this chapter."

Section 57. Section 19-7-402, MCA, is amended to read:

"**19-7-402. Sources of money in fund.** The following money must be paid to the ~~division~~ board, which shall credit the payments to the pension trust fund:

(1) all contributions by the various counties as required by this chapter;

(2) all contributions by members as required by this chapter;

(3) all interest on and increase of the investments and money under this chapter; and

(4) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems."

Section 58. Section 19-7-503, MCA, is amended to read:

"**19-7-503. Service retirement benefit.** (1) The amount of any service retirement benefit granted to a member is 2.5% of the member's final average salary for each year of service credit.

(2) If a retired member dies ~~after retirement and had not elected an optional retirement benefit provided for in~~ without designating a contingent annuitant under 19-7-1001, the member's designated beneficiary must be paid the ~~excess~~ amount, if any, of the member's accumulated contributions ~~at the time of retirement less payments made to the retired member~~ calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account."

Section 59. Section 19-7-711, MCA, is amended to read:

"**19-7-711. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 60. Section 19-7-802, MCA, is amended to read:

"**19-7-802. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', highway patrol officers', firefighters' unified, game wardens', or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the ~~division~~ board shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit upon contribution by the employee of the actuarial cost of granting this service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes

full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 61. Section 19-7-804, MCA, is amended to read:

"**19-7-804. Election to purchase additional service.** (1) Except as provided in subsection (6), at any time before retirement, a member may make a written election with the board to purchase 1 additional year of service credit for every 5 years of membership service.

(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

(3) To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement.

(5) Service qualified under this section may not be~~:~~

~~(a) credited in any other retirement system under Title 19; or~~

~~(b)~~ used to qualify for the purchase of military service under 19-7-803.

(6) The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years."

Section 62. Section 19-7-1001, MCA, is amended to read:

"**19-7-1001. Optional forms of benefits.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written ~~designation~~ application, executed and filed with the board ~~on~~ with the application for benefits, as follows:

(a) Option 2--a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3--a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4--upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written application to the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 63. Section 19-8-102, MCA, is amended to read:

"**19-8-102. Game wardens' and peace officers' retirement system established.** There is a retirement ~~system~~ plan known as the game wardens' and peace officers' retirement system, which is governed by the provisions of chapter 2 and this chapter."

Section 64. Section 19-8-501, MCA, is amended to read:

"**19-8-501. Contributions to pension trust fund.** The following must be paid to the ~~division~~ board and must be credited to the pension trust fund:

(1) all contributions by the state from department of fish, wildlife, and parks money;

(2) all contributions by the state game wardens; and

(3) all interest on and increase of the investments and money in the pension trust fund."

Section 65. Section 19-8-712, MCA, is amended to read:

"**19-8-712. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may submit a written application to the board to request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for

reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review."

Section 66. Section 19-8-801, MCA, is amended to read:

"**19-8-801. Optional forms of benefits.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted in lieu of all other benefits under this chapter into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2--a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3--a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4--upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written application to the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original

contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 67. Section 19-8-901, MCA, is amended to read:

"**19-8-901. Election to qualify military service.** (1) A member with 15 years or more of service credit qualified under this chapter may, at any time prior to retirement, make a written ~~election~~ application with the board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service.

(2) To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. The member may not qualify more years of military service than the member has years of service credits in excess of 15 years."

Section 68. Section 19-8-902, MCA, is amended to read:

"**19-8-902. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the game wardens' and peace officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the game wardens' and peace officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' and peace officers' retirement system, according to the most recent actuarial valuation,

based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the game wardens' and peace officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 69. Section 19-8-1002, MCA, is amended to read:

"**19-8-1002. Postretirement death payments.** If a member who retires on or after July 1, 1997, ~~and who has not chosen an option 2, 3, or 4 retirement benefit~~ dies without designating a contingent annuitant under 19-8-801 ~~dies before receiving an amount equal to the member's total amount of contributions and interest on account as that amount was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump-sum payment~~, the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account."

Section 70. Section 19-8-1105, MCA, is amended to read:

"**19-8-1105. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or

more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 71. Section 19-9-103, MCA, is amended to read:

"**19-9-103. Municipal police officers' retirement system established.** ~~A~~ There is a retirement plan known as the municipal police officers' retirement system ~~is established, which~~. The plan is governed by the provisions of chapter 2 and this chapter."

Section 72. Section 19-9-405, MCA, is amended to read:

"**19-9-405. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' and peace officers' retirement system for which the member either has received or is eligible to receive a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the municipal police officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~*This service may not be credited in more than one retirement system under Title 19.*~~

(b) Upon receiving the member's payment under subsection (1)(a), the ~~division~~ board shall transfer from the member's former retirement system to the municipal police officers' retirement

system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the municipal police officers' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the regular contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 73. Section 19-9-702, MCA, is amended to read:

"**19-9-702. State contribution.** The state of Montana shall make its contributions from the general fund. The general fund contributions must be made annually after the end of each fiscal year but no later than November 1. The ~~division~~ board shall notify the state auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is 29.37% of compensation paid to members. The contributions are statutorily appropriated as provided in 17-7-502."

Section 74. Section 19-9-703, MCA, is amended to read:

"**19-9-703. Employer contribution.** Each employer shall make its contribution through the city treasurer or other appropriate official out of money available to the city for that purpose. The employer's contribution, which must be paid monthly to the ~~division~~ board, is 14.41% of the compensation paid to all active members."

Section 75. Section 19-9-706, MCA, is amended to read:

"**19-9-706. Contributions based on total compensation when member receives disability compensation.** When a member receives compensation from both the member's employer and as benefits from the workers' compensation program under the provisions of 7-32-4132, the member's compensation reported by the employer is the same as if the member was in active service, and the member, employer, and state retirement contributions required by this chapter must be calculated and paid on that total compensation. ~~The service represented by these contributions must be credited in the same manner as provided in 19-9-401.~~"

Section 76. Section 19-9-1007, MCA, is amended to read:

"**19-9-1007. Minimum benefit adjustment.** (1) The benefits that are paid in each fiscal year to a retired member or the member's survivors and that are not covered by 19-9-1009 may not be less than one-half of the compensation that will be paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired.

(2) If the compensation of a newly confirmed police officer has not been set for the current fiscal year in time to make minimum benefit adjustments effective July 1, the division shall make any retroactive adjustments necessary to individual minimum benefits after the current compensation has been determined ~~and shall include these amounts in the next year's report for reimbursement at that time~~.

(3) If more than one dependent child is entitled to benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the benefits must be paid to the dependent children collectively."

Section 77. Section 19-9-1009, MCA, is amended to read:

"**19-9-1009. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 78. Section 19-9-1101, MCA, is amended to read:

"**19-9-1101. Preretirement death benefits.** (1) Upon the death of a member before retirement, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average compensation as provided in 19-9-804. If the deceased member has completed over 20 years of membership service, the survivorship benefit must equal 2.5% of the member's final average compensation for each year of membership service.

(2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent child is eligible for a refund of the member's accumulated contributions."

Section 79. Section 19-9-1102, MCA, is amended to read:

"**19-9-1102. Payments in absence of spouse or child.** If a retired member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the ~~division~~ board as provided in 19-2-801, the designated beneficiary must be paid ~~an~~ the amount ~~equal~~

~~to~~, if any, of the member's accumulated contributions ~~less~~ minus the total of any retirement benefits already paid ~~to the member before the member's death~~ from the member's account. If the member did not designate a beneficiary or the designated beneficiary predeceased the member, ~~this~~ the amount must be paid to the member's estate."

Section 80. Section 19-13-103, MCA, is amended to read:

"**19-13-103. Firefighters' unified retirement system established.** A retirement plan is established and known as the firefighters' unified retirement system. The plan is ~~established and~~ governed by the provisions of chapter 2 and this chapter."

Section 81. Section 19-13-104, MCA, is amended to read:

"**19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for the firefighter's service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution

as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes ~~10~~ 5 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 82. Section 19-13-404, MCA, is amended to read:

"**19-13-404. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', sheriffs', municipal police officers', or game wardens' and peace officers' retirement system for which the member either has received or is eligible to receive a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the firefighters' unified retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be~~

~~credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the ~~division~~ board shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service, but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 83. Section 19-13-604, MCA, is amended to read:

"**19-13-604. State contribution.** The state shall make its contributions from the general fund. Payments must be made annually from the general fund to the pension trust fund after the end of each fiscal year but no later than November 1. The ~~division~~ board shall notify the state auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year. The state's contribution is 32.61% of this total compensation. The contributions are statutorily appropriated as provided in 17-7-502."

Section 84. Section 19-13-605, MCA, is amended to read:

"**19-13-605. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available to the city for this purpose. The employer's contribution is 14.36% of the total compensation paid to members. All

contributions are payable monthly to the ~~division~~ board, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund."

Section 85. Section 19-13-607, MCA, is amended to read:

"**19-13-607. Other money credited as employer contributions.** All gifts, bequests, and emoluments given to an employer or member for the benefit of the retirement system or because of any member's service as a firefighter, except when specifically allowed to be retained by the member by the member's employer, must be paid to the ~~division~~ board. The ~~division~~ board shall deposit them in the pension trust fund. The amounts are employer contributions but are in addition to the amounts required by 19-13-605."

Section 86. Section 19-13-704, MCA, is amended to read:

"**19-13-704. Amount of service retirement benefit.** (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) A member hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of service, a benefit equal to 2% of the member's final monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of service, a benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the ~~allowance~~ benefit as long as they remain dependent children as defined in 19-13-104."

Section 87. Section 19-13-903, MCA, is amended to read:

"**19-13-903. Payments in absence of spouse or dependent child.** If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing

to the ~~division~~ board as provided in 19-2-801, the ~~division~~ board shall pay to the designated beneficiary ~~an~~ the amount, ~~equal to~~ if any, of the retired member's accumulated contributions ~~less~~ minus the total of any retirement benefits already paid ~~to~~ from the ~~member before the~~ member's ~~death~~ account. If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, ~~this~~ the amount must be paid to the member's estate."

Section 88. Section 19-13-1007, MCA, is amended to read:

"**19-13-1007. Minimum benefit adjustment.** (1) The following applies to a member with 10 or more years of service who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(b) If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

Section 89. Section 19-13-1010, MCA, is amended to read:

"**19-13-1010. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 90. Section 19-17-102, MCA, is amended to read:

"**19-17-102. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

~~(8) "Division" means the public employees' retirement division of the department.~~

~~(9)~~(8) "Fire company" means a fire company organized in an unincorporated area, town, or village in accordance with 7-33-2311.

~~(10)~~(9) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

~~(11)~~(10) "Member" means a volunteer firefighter who has service credited under this chapter.

~~(12)~~(11) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay benefits under this chapter.

~~(13)~~(12) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits from the pension trust fund.

~~(14)~~(13) "Service" means cumulative periods of active membership that are credited only in full fiscal years.

~~(15)~~(14) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

~~(16)~~(15) "Surviving spouse" means the spouse married to a member when the member dies.

~~(17)~~(16) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

~~(18)~~(17) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

Section 91. Section 19-17-106, MCA, is amended to read:

"**19-17-106. Pension trust fund established -- restrictions on use.** (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan.

(2) Except as provided in this section, a member or an employee of the department or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the ~~division~~ board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

(3) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, their dependent children, and qualified fire companies and for paying the reasonable administrative expenses of administering this chapter."

Section 92. Section 19-17-108, MCA, is amended to read:

"**19-17-108. Credit for service as volunteer firefighter.** (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the ~~division~~ board by the chief or ~~foreman~~ supervisor of the fire company;

(b) the fire company maintained firefighting equipment that is in serviceable condition and

owns one or more buildings used for the storage of that equipment that all together are valued at $12,000 or more; and

(c) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates."

Section 93. Section 19-17-204, MCA, is amended to read:

"**19-17-204. Administrative expenses.** Necessary expenses for the administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan are a charge against the pension trust fund. The necessary administrative expenses attributable to this chapter must be paid from the investment earnings on the public employees' pension trust fund. Before fiscal yearend closing, the ~~division~~ board shall compute the expenses directly or proportionally attributable to this chapter over the past fiscal year and transfer that amount from the volunteer firefighters' pension trust fund to the public employees' pension trust fund."

Section 94. Section 19-19-201, MCA, is amended to read:

"**19-19-201. Local boards of trustees of funds.** (1) Each city or town ~~which~~ that has a police retirement fund must have a board of trustees of ~~such~~ the fund, except as provided in subsection (4).

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They ~~shall~~ must be selected by a majority vote of the members of the police department on the active list of the city or town. One ~~shall~~ must be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election must be certified to the city clerk by the ~~chairman~~ presiding officer of the board and secretary of the meeting at which the selection was made.

(4) The board of trustees of the police retirement fund of a city ~~which~~ that elects to participate in the municipal police officers' retirement system under 19-9-207 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the ~~department of administration and the~~ public employees' retirement board, as provided in the Municipal Police Officers' Retirement Act."

Section 95. Section 19-19-205, MCA, is amended to read:

"19-19-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the ~~department of administration~~ public employees' retirement board before October 1 of each odd-numbered year all information requested by the ~~department~~ public employees' retirement board necessary to complete an actuarial valuation of the city's police retirement fund. The valuation must consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation must be prepared by a qualified actuary selected by the ~~department~~ public employees' retirement board. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the ~~department~~ public employees' retirement board shall submit to the state treasurer a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state treasurer shall make payment to the actuary from the general fund."

Section 96. Section 70-9-803, MCA, is amended to read:

"70-9-803. Presumptions of abandonment. (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:

(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or

(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(d) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

(e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5

years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value;

(h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(i) property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

(j) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

(k) property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

(l) wages or other compensation for personal services, 1 year after the compensation becomes payable;

(m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

(n) property in an individual retirement account, defined benefit plan, or other account or plan except an account or plan established by Title 19, that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(o) a patronage refund owed to a member of a rural electric or telephone cooperative organized

under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date;

(p) an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date; and

(q) all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a deposit to or withdrawal from an account in a financial organization; and

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of this part notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to:

(a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; or

(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located."

Section 97. Section 72-2-814, MCA, is amended to read:

"**72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other changes of circumstances.** (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as to a retirement system established in Title 19 or as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party does not have a duty or obligation to

inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or

benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

NEW SECTION. **Section 98. Repealer.** Section 19-9-401, MCA, is repealed.

NEW SECTION. **Section 99. Codification instruction.** (1) [Section 19] is intended to be codified as an integral part of Title 19, chapter 2, part 10, and the provisions of Title 19, chapter 2, part 10, apply to [section 19].

(2) [Section 55] is intended to be codified as an integral part of Title 19, chapter 6, part 8, and the provisions of Title 19, chapter 6, part 8, apply to [section 55].

(3) [Section 55] is intended to be codified as an integral part of Title 19, chapter 7, part 8, and the provisions of Title 19, chapter 7, part 8, apply to [section 55].

NEW SECTION. **Section 100. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 101. Effective date.** [This act] is effective July 1, 1999.

NEW SECTION. **Section 102. Retroactive applicability.** [Sections 19 and 96] apply retroactively, within the meaning of 1-2-109, to July 1, 1997.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on January 22, 1999 at 9:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Jeff Mangan (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s: HB 274, 148, 268, 182, 1/22/1999
Posted: HB 274-1/13, HB 148-1/5, HB 268-1/12, HB 182-1/4
Executive Action: None

PAT CLINCH: Fire Fighter's Assoc. EXHIBIT(2)
{Tape : 1; Side : A; Approx. Time Counter : 12.7 - 13.7}

Opponents' Testimony: None

Questions from Committee Members and Responses:
Tape : 1; Side : A; Approx. Time Counter : 14.4 - 27.6

Closing by Sponsor: REP. GEORGE GOLIE
{Tape : 1; Side : A; Approx. Time Counter : 27.7 - 28.5}

HEARING ON HB 268

Opening Statement by Sponsor: REP. BRAD MOLNAR
{Tape : 1; Side : B; Approx. Time Counter : 0.4 - 7.8}

Questions from Committee Members and Responses: None

Closing by Sponsor: REP. BRAD MOLNAR
{Tape : 1; Side : B; Approx. Time Counter : 12.8 - 13}

HEARING ON HB 182

Opening Statement by Sponsor: REP. CHRIS AHNER
{Tape : 1; Side : B; Approx. Time Counter : 13.6 - 15.2}

Proponents' Testimony: MIKE O'CONNOR, PERS EXHIBIT(3)
{Tape : 1; Side : B; Approx. Time Counter : 15.8 - 29}

KELLY JENKINS, Legal Counsel PERS
{Tape : 2; Side : A; Approx. Time Counter : 5.9 - 18}

PAT CLINCH: MSCPFF
{Tape : 2; Side : A; Approx. Time Counter : 18.3 - 18.7}

DAVE SENN: Ex. Dir. of TRS
Tape : 2; Side : A; Approx. Time Counter : 18.8 - 1

Opponents' Testimony:

MARY BRYSON: Dept. of Revenue EXHIBIT(4)
Tape : 2; Side : A; Approx. Time Counter : 20 - 27.1

Questions from Committee Members and Responses:
{Tape : 2; Side : A; Approx. Time Counter : 28 - 30}

Informational Testimony: Not enclosed because he didn't sign in.
{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 20.6}

Closing by Sponsor: REP. CHRIS AHNER
{Tape : 2; Side : B; Approx. Time Counter : 20.8 - 21.1}

TABLE OF PROPOSED HOUSEKEEPING LEGISLATION (HB 182)

EXHIBIT 3 3
DATE Jan. 22
SB 182

S:\DOCS\LEGIS\1999\HOUSEKEP\HKTABLE3.TBL/January 21, 1999

This table contains a very brief summary by PER Board staff of the major provisions of LC0182 as introduced. It should not be considered definitive legal authority nor indicative of Board or legislative intent.

Section	Statute	Proposed Change	Reason
1	2-15-1009	Clarify that the retired Board member is a member of a retirement system and not an inactive member of a system.	The definitions changed and members may be either active, inactive, or retired. They cannot fit into more than one category, so a member cannot be retired and inactive.
2	7-32-4132	Modify 7-32-4132 to include any city or town who contracted for retirement coverage under 19-9-706, in regards to Workers' Compensation payments	When a member of the Municipal Police Officers' System employed by a city other than a first or second class city becomes disabled and is unable to work, the member is not allowed to include the WorkComp salary in the calculation of their Final Average Compensation (used to calculate their benefit). They also do not receive credit for the unreported service. Any city electing coverage with the MPORS should conform with the same requirements as the first and second class cities.
3	19-2-302	A retirement "system" may have more than one retirement "plan. "	This change accounts for the fact a retirement system could have more than one plan and the change makes it clear that both systems and plans are covered by Chapters 3, 5 through 9, and 13 of Title 19.
4	19-2-303	Repeal the definition of "division" and replace "division" with board." Clarify the definition of "retirement or retired," "retirement system or system," and "written application."	"Division" is no longer used in the statutes. Includes language that a member must have a 30 day break in service to be retired Clarifies that both retirement systems and plans are covered by the statutes. Clarifies that a written application must be an approved written instrument.
5	19-2-403	Clarify or expand the powers of the Board in the matter of subpoena rights beyond the current limitation of only disability determinations (see 19-2-406). Provides for the Board to delegate powers and duties of the Board. Change tables to rates in 19-2-403(8).	Full discovery authority by the Board is necessary to fulfill the responsibilities of system administration. The Board should be allowed to subpoena information necessary regarding benefits, contributions, service credit of our members - active, inactive, refunded, and retired. Makes clear the Board has authority to delegate certain powers and duties. Tables were changed to rates because the Board adopts the rates not the tables.
6	19-2-404	Change the title of Administrator to Executive Director.	Standard term for the senior member of the staff of an independent board.
7	19-2-406	Add "and records" after "certify to official acts."	Use consistent language within similar statutes (19-2-403).
8	19-2-407	Change "division" to" board."	Use appropriate and defined terms.
9	19-2-408	Delete "the division may."	Use appropriate and defined terms.

Section	Statute	Proposed Change	Reason
10	19-2-503	Change "it" to "the board."	Use appropriate and defined terms.
11	19-2-505	Change "division" to" board."	Use appropriate and defined terms.
12	19-2-506	Clarify that employers must submit reports on all employees not just members. Change "division" to" board"	Will allow the Board to compare all employees against the data base to determine if employees are correctly reported. Use appropriate and defined terms.
13	19-2-507	Change "division" to" board." Delete last sentence.	Use appropriate and defined terms. Last sentence was deleted because it is not needed.
14	19-2-602	Change "division" to" board" and "request" to "application". In paragraph (1) clarify that the Board must approve the written application for a refund.	Use appropriate and defined terms. Add language to clarify the Board must approve a written application before a member may receive a refund.
15	19-2-701	State that covered employment is cumulative.	Added language to clarify that all covered employment by an employee is cumulative, regardless of the number of employers
16	19-2-703	Change "allowances" to "benefits".	Consistent terminology
17	19-2-801	Include charitable organizations and trusts for the benefit of natural living persons in the definition of designated beneficiaries. Change "division" to" board."	Conform with IRS requirements. Use appropriate and defined terms.
18	19-2-802	Clarify payments in the event the designated beneficiary does not survive the payment recipient. Change "division" to" board."	Current language is confusing. First sentence should end "is entitled to a lump sum payment or retirement benefit, if the payment or benefit has accrued but has not been received." Statute now reads "any lump-sum payment or retirement benefit accrued but not received". The phrase "accrued but not received" might only apply to "retirement benefit". Also it is inaccurate to say the statute addresses all payments or benefits "accrued ... prior to the statutory or designated beneficiary's death" (the beneficiary predeceased the member and the statute only addresses amounts not received by the member). Use appropriate and defined terms.
19	New	New statute stating that if this chapter conflicts with the Uniform Probate Code or the Uniform Unclaimed Property Act, this chapter will supersede the conflicting provision of the Act.	A provision in the Uniform Probate Code says that a contract not specifically disposed of in a divorce will be voided on death if it would provide property to the ex-spouse of the decedent. We faced arguments that the estate of the decedent should receive a lump sum instead of the designated beneficiary (ex-spouse). The courts agreed with the interpretation that the beneficiary should receive the lump sum from the retirement system.

Section	Statute	Proposed Change	Reason
20	19-2-1101	Change "benefits initiation date" to "benefits commencement date."	Use consistent terms.
21	19-3-103	State the retirement system is a retirement plan	By GASB definitions, the retirement systems administered by the Board are plans.
22	19-3-201	Change subsection (3)(c) (20 day waiting period) to require the legislative body to take action within 20, rather than "not less than 20 days."	Requiring the legislative body to take action within 20 days makes more sense.
23	19-3-319	Change "division" to" board."	Use appropriate and defined terms.
24	19-3-401	Clearly state that a 30 day break in service is needed to terminate service.	A 30 day break is implied by our procedures (receipt of a benefit – necessary to be retired – takes more than 30 days, for example). However, a lot of problems and confusion arise from not being explicit. We have PERS employees becoming elected officials and trying to opt out without a break in service. In part, this is also a federal qualification issue. IRC Section 401(a) prohibits in-service distribution of benefits. To be clear that a person returning to service after retirement is not receiving a benefit while still being employed, a clear break in service is necessary. Thirty days is often noted as an acceptable standard.
25	19-3-403	Change "allowances" to "benefits."	Consistent terminology
26	19-3-412	Delete part-time and state that hours with all employers are cumulative. Add language stating which employees may decline membership, when an employee may decline membership, the requirements for declining membership, and the circumstances when declined membership may be purchased	The 960 hour limit applies to all employees not just part-time employees and is cumulative. Current statute does not clearly state the requirements for declining optional membership.

Section	Statute	Proposed Change	Reason
27	19-3-505	Clarify the applicability of the provisions in 19-3-505.	The language of (1) provides that "any person who has employment with an employer that is not service may convert all or a portion of the employment to membership service by filing written notice with the board." However, 19-2-303(32) defines "service" as "employment of an employee in a position covered by a retirement system". (1) is difficult to interpret. a member can't have "employment with an employer" (as "employer" is defined) that is not "employment of an employee in a position covered by a retirement system" (i.e., "service"). (1) should be limited in effect to employment with an "employer" before the employer's coverage contract and purchase of time during a period of employment when membership was optional. Also, the section needs to be reorganized for understandability. Language in (2) was also changed to state Board approval is needed and to clarify the requirements.
28	19-3-509	Delete language which prohibits duplication of service. Change "division" to" board."	19-2-703 prohibits duplication of service in all systems. Use appropriate and defined terms.
29	19-3-512	Delete language which prohibits duplication of service.	19-2-703 prohibits duplication of service in all systems.
30	19-3-521	Change normal contributions to regular contributions.	Use terms defined in statute.
31	19-3-904	Change "annuity" to "benefit". 19-3-904(1)(a), delete "accumulated," and add plus regular interest. Delete subparagraph (2).	Sub paragraph (2) was deleted because it duplicates 19-3-1210.
32	19-3-1005	Replace "discontinuance of" service with "termination from" service.	Use of consistent terms to agree with 19-2-908(3).
33	19-3-1015	Change "request" to "written application."	Use consistent terms and terms defined in statute.
34	19-3-1103	Change "request" to "written application," and eliminate confusing language.	Use consistent terms and terms defined in statute and deleted confusing and unneeded language.
35	19-3-1106	Require the employer to also certify the number of hours worked and compensation paid to a working retiree.	Under current statute, the working retiree is required to report the number of hours worked and the salary received, but not the employer. The employer should also report any salary and hours worked.

Section	Statute	Proposed Change	Reason
36	19-3-1204	Add (2) to allow the designated beneficiary of a vested member to receive a survivorship benefit in lieu of the lump sum payment. Add "and no payment has been made" after the word "behalf" in subparagraph(3)(b).	This offers the same benefits to the designated beneficiaries of vested-active and vested-inactive members. The second part conforms with practice and clarifies that a non-conforming interpretation is inappropriate. If a member passes away, payments for a minor child can be made to the legal guardian, surviving parent, etc. We want to make it clear that if a payment has been made, there cannot be another payment. (Such as if the payment went to a surviving parent and the legal guardian contested the payment).
37	19-3-1210	Change language to include all payments made from a members account.	Payments considered (for deduction from accumulated contributions) should not be limited to payments to the member but also those to the alternate payee under a FLO; or all payments made as a result of the member's membership. Also made editorial changes to clarify the language.
38	19-3-1501	Change " written request" to "written application."	Use terms defined in statute.
39	19-3-1605	Change "benefits initiation date" to "benefits commencement date."	Use consistent terms.
40	19-5-102	State the retirement system is a retirement pan.	By GASB definitions, the retirement systems administered by the Board are plans.
41	19-5-401	Change "division" to" board."	Use appropriate and defined terms.
42	19-5-503	Repeal (2) which deals with involuntary termination regarding pre-1983 appointment or election of a judge to office.	No longer applicable.
43	19-5-701	Include the provision from 19-3-1501 which allows retired members to change the contingent annuitant upon death or divorce of contingent annuitant.	In PERS, retired members are allowed to name a new contingent annuitant if the original contingent annuitant passes away or there is a divorce. This provision should be available to the Judges' Retirement System. Providing for the new contingent annuitant requires an actuarial recalculation of the retirement benefit.
44	19-5-802	Change language to include all payments made from a members account.	Payments considered (for deduction from accumulated contributions) should not be limited to payments to the member but also those to the alternate payee under a FLO; or all payments made as a result of the member's membership.
45	19-5-901	Change "benefits initiation date" to "benefits commencement date."	Use consistent terms.

Section	Statute	Proposed Change	Reason
46	19-6-102	State the retirement system is a retirement pan.	By GASB definitions, the retirement systems administered by the Board are plans.
47	19-6-503	Change "division" to" board."	Use appropriate and defined terms.
48	19-6-505	Change language to include all payments made from a members account.	Payments considered (for deduction from accumulated contributions) should not be limited to payments to the member but also those to the alternate payee under a FLO; or all payments made as a result of the member's membership.
49	19-6-612	In (2), add language that a written application must be submitted to the Board for a reconsideration of a Board decision.	Clarify that a request for reconsideration must be a written request.
50	19-6-709	Change "division" to" board."	Use appropriate and defined terms.
51	19-6-710	Change "benefits initiation date" to "benefits commencement date."	Use consistent terms.
52	19-6-801	Change "division" to" board."	Use appropriate and defined terms.
53	19-6-802	Delete language which prohibits duplication of service.	19-2-703 prohibits duplication of service in all systems.
54	19-6-803	Delete language which prohibits duplication of service. Change "total contributions" to "actuarial rate." Change "division" to" board."	19-2-703 prohibits duplication of service in all systems. The actuarial rate is the appropriate term. Use appropriate and defined terms.
55	New	Provide members the Highway Patrol Retirement System and Sheriffs Retirement System with service credit for periods of compensated leave due to work-related injuries compensated by Workers Compensation benefits.	Under current statute, PERS and GWPORS members are allowed to purchase upon the return to work, any time lost while on Workers Compensation. This benefit was to be extended to all retirement systems (except FURS and MPORS who have built-in coverage). Consequently, when a member of the HPORS or SRS is injured, they do not receive service credit for the time off work. 19-3-504
56	19-7-102	State the retirement system is a retirement plan and delete unnecessary comments.	By GASB definitions, the retirement systems administered by the Board are plans.
57	19-7-402	Change "division" to" board."	Use appropriate and defined terms.
58	19-7-503	Change language to include all payments made from a members account.	Payments considered (for deduction from accumulated contributions) should not be limited to payments to the member but also those to the alternate payee under a FLO; or all payments made as a result of the member's membership.

Section	Statute	Proposed Change	Reason
59	19 -7-711	Change "benefits initiation date" to "benefits commencement date."	Use consistent terms.
60	19-7-802	Delete language which prohibits duplication of service. Change "division" to" board."	19-2-703 prohibits duplication of service in all systems. Use appropriate and defined terms.
61	19-7-804	Delete language which prohibits duplication of service.	19-2-703 prohibits duplication of service in all systems.
62	19-7-1001	Include the provision from 19-3-1501 which allows retired members to change the contingent annuitant upon death or divorce of contingent annuitant. Change "written designation" to "written application."	In PERS, retired members are allowed to name a new contingent annuitant if the original contingent annuitant passes away or there is a divorce. This provision should be available to the Sheriffs' Retirement System. Providing for the new contingent annuitant requires an actuarial recalculation of the retirement benefit.
63	19-8-102	State the retirement system is a retirement pan.	By GASB definitions, the retirement systems administered by the Board are plans.
64	19-8-501	Change "division" to" board."	Use appropriate and defined terms.
65	19-8-712	In (2), add language that a written application must be submitted to the Board for a reconsideration of a Board decision.	Clarify that a request for reconsideration must be a written request.
66	19-8-801	Include the provision from 19-3-1501 which allows retired members to change the contingent annuitant upon death or divorce of contingent annuitant.	In PERS, retired members are allowed to name a new contingent annuitant if the original contingent annuitant passes away or there is a divorce. This provision should be available to the Game Wardens' and Peace Officers' Retirement System. Providing for the new contingent annuitant requires an actuarial recalculation of the retirement benefit.
67	19-8-901	Change "election" to "application" and "qualify" to "purchase."	Use of consistent terms.
68	19-8-902	Delete language which prohibits duplication of service.	19-2-703 prohibits duplication of service in all systems.
69	19-8-1002	Change language to include all payments made from a members account.	Payments considered (for deduction from accumulated contributions) should not be limited to payments to the member but also those to the alternate payee under a FLO; or all payments made as a result of the member's membership.
70	19-8-1105	Change "benefits initiation date" to "benefits commencement date."	Use consistent terms.
71	19-9-103	State the retirement system is a retirement pan.	By GASB definitions, the retirement systems administered by the Board are plans.

Section	Statute	Proposed Change	Reason
72	19-9-405	Delete language which prohibits duplication of service.	19-2-703 prohibits duplication of service in all systems.
73	19-9-702	Change "division" to" board."	Use appropriate and defined terms.
74	19-9-703	Change "division" to" board."	Use appropriate and defined terms.
75	19-9-706	Delete last sentence.	Redundant, §19-9-401 requires the service to be credited.
76	19-9-1007	Delete last part of subsection (2) after "and."	This deals with the old method used to fund the minimum benefit which was changed to actuarial funding during the 1997 session.
77	19-9-1009	Change "benefits initiation date" to "benefits commencement date."	Use consistent terms.
78	19-9-1101	Add language explaining the survivors benefit if the member completed more than 20 years of service.	The current method penalized the survivors of members who completed more than 20 years of service.
79	19-9-1102	Change "division" to" board," and edit to make this section the same as similar sections in other chapters.	Use appropriate and defined terms and use consistent language in Chapters 3, 5 through 9 and 13.
80	19-13-103	State the retirement system is a retirement pan.	By GASB definitions, the retirement systems administered by the Board are plans.
81	19-13-104	In (8) Minimum Retirement Date change 10 to 5.	Vesting was reduced to 5 years during the 1997 session, but this subsection was not changed.
82	19-13-404	Delete language which prohibits duplication of service. Change "division" to" board."	19-2-703 prohibits duplication of service in all systems. Use appropriate and defined terms.
83	19-13-604	Change "division" to" board."	Use appropriate and defined terms.
84	19-13-605	Change "division" to" board."	Use appropriate and defined terms.
85	19-13-607	Change "division" to" board."	Use appropriate and defined terms.
86	19-13-704	Change "allowance" to "benefit."	Consistent terminology.
87	19-13-903	Change "division" to" board," and edit to make this section the same as similar sections in other chapters.	Use appropriate and defined terms and use consistent language for all retirement systems.
88	19-13-1007	Minimum retirement date add a requirement for 10 or more years.	Ten or more years is needed because this benefit was based on a member having a minimum of 10 years of service, but in 1997 vesting was reduced to 5 years. It was intended to leave the minimum benefit adjustment at 10 years (See section 81)

Section	Statute	Proposed Change	Reason
89	19-13-1010	Change "benefits initiation date" to "benefits commencement date."	Use consistent terms.
90	19-17-102	Delete definition of "division."	Not needed because it is no longer used in chapter 17.
91	19-17-106	Change "division" to" board."	Use appropriate and defined terms.
92	19-17-108	Change "division" to" board."	Use appropriate and defined terms.
93	19-17-204	Change "division" to" board."	Use appropriate and defined terms.
94	19-19-201	Change "department of administration" public employees' retirement board.	Use appropriate and defined terms.
95	19-19-205	Change "department of administration" public employees' retirement board.	Use appropriate and defined terms.
96	70-9-803	Amend to exempt retirement system accounts.	The escheat statute (Uniform Unclaimed Property Act) says member accounts may transfer to the general fund after a certain period if they are not claimed. This contravenes the constitutional provision which says the funds will be used for only the benefit of members and beneficiaries.
97	72-2-814	Amend to exclude retirement plans or systems.	A provision in the Uniform Probate Code says that a contract not specifically disposed of in a divorce will be voided on death if it would provide property to the ex-spouse of the decedent. We face arguments that the estate of the decedent should receive a lump sum instead of the designated beneficiary (ex-spouse). Either the Uniform Probate Code provision should be changed, to the same result incorporated in Title 19, Chapter 2.
98	New	Repealer - Section 19-9-401 is repealed	Included in Section 19-2-701 in section 14 of this bill.
99	New	Codification instruction	
100	New	Saving Clause	
101	New	Effective Date - 1 July 1999	Coincides with fiscal year
102	New	Retroactive applicability, [section 19 and 96] applies retroactively, within the meaning of 1-2-109, to July 1, 1997	Uniform Unclaimed Property Act and Uniform Probate Code

EXHIBIT 4
DATE Jan. 22
HB 182

4

HB182

Testimony of the Department of Revenue in Opposition to Amending Section 70-9-803, MCA

January 22, 1999

Why does the Department oppose HB182?

- The Department opposes only the change found in §96 of HB182.
- The proposed change exempts an account or plan established by Title 19 of the Montana Code Annotated from the provisions of Unclaimed Property Laws
- Such exemption will set a bad precedent and encourage other holders of unclaimed property to seek exemption from the law
- A single point of contact for owners to inquire about and claim property that is rightfully theirs is much better than requiring them to contact multiple locations
- Allowing exemptions could result in a negative impact on the General Fund

Summary

- The Department believes the change to the Unclaimed Property Law establishes a bad precedent
- The Montana Constitution does not mandate the change
- There may be a negative impact on the General Fund due to the change

The Department respectfully requests that §96 of HB182 be struck in its entirety.

What are Unclaimed Property Laws?

- Unclaimed Property Laws are designed to meet three goals:
  - to reunite lost owners with the property that is rightfully theirs;
  - to protect the holder from subsequent claims by the owner after the property is transferred to the state; and
  - to ensure that any economic windfall is for the benefit of the state and its citizens and not for the holder.
- Dormancy period statutes determine when property is to be turned over to the state
- Once turned over to the state, the property is held in perpetuity on behalf of the rightful owner or that owner's heirs
- Monies received are deposited in the General Fund and correspondingly refunds to an owner or their heirs are paid from the General Fund

What are some performance standards related to Unclaimed Property Laws?

- Approximately $2 million is received each year from holders of unclaimed property
- Approximately $800K to $1 million is returned each year to owners or their heirs
- Approximately 4,000 reports are filed each year by holders of unclaimed property
- Currently, the state is holding money for approximately 130,000 owners
- The total value of the property still unclaimed is approximately $16 million dollars
- Unclaimed Property Laws have been in existence since 1963

HOUSE OF REPRESENTATIVE
ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE Jan. 22, 1999

	NAME	PRESENT	ABSENT	EXCUSED
Rep	Allan Walters	✓		
Rep	Don Hedges	✓		
Rep	Frank Smith	✓		
Rep	Darrel Adams	✓		
Rep	Joan Andersen	✓		
Rep	Tom Dell	✓		
Rep	Bill Tash	✓		
Rep	Jeff Mangan	✓		
Rep	Doug Mood	✓		
Rep	Brennan Ryan	✓		
Rep	George Golie	✓		
Rep	Doug Wagner	✓		
Rep	~~Edith Clark~~	✓		
Rep	~~Monica Lindeen~~	✓		
Rep	~~Bill Thomas~~	✓		
Rep	~~Toni Hagener~~	✓		
		✓		
Rep	Matt Brainard	✓		
	Sheri Heffelfinger	✓		

DATE Jan. 22, 1999

BILL NO. 182 SPONSOR(S) Rep. Ohner

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Pat Clinch	Helena	MSC PFF
P (O) I	Mary Bryson	Helena	Dept of Revenue
(P) O I	Kelly Jenkins	PER Board	PER Board
(P) O I	Mike O'Connor	"	"
P O I			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on February 10, 1999 at 8:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: Rep. Jeff Mangan (D)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s): HB 445, 446, 474, 471,
Executive Action: 474, 182,; Tabled: HB 471, 446, 445, 148
Dates Posted: 445, 446, 2/5; 474, 471, 12/5

Motion: REP. BRAINARD moved that HB 148 BE TABLED and the vote reversed to 11-6. Motion carried.
{Tape : 3; Side : B; Approx. Time Counter : 5.4 - 5.5}

EXECUTIVE ACTION ON HB 182

Motion: REP. HAGENER moved DO PASS on HB 182
{Tape : 3; Side : B; Approx. Time Counter : 5.5 - 9.4}

Informational Discussion: Sheri Heffelfinger EXHIBIT(7) amendment
{Tape : 3; Side : B; Approx. Time Counter : 9.4 - 9.6}

Motion: REP. HAGENER moved DO PASS on HB 182 as amended
{Tape : 3; Side : B; Approx. Time Counter : 9.6 - 9.7}

Discussion:
{Tape : 3; Side : B; Approx. Time Counter : 9.7 - 12.2}

Motion: The motion carried by unanimous vote to adopt amendment.
{Tape : 3; Side : B; Approx. Time Counter : 12.2 - 12.9}

Motion: REP. HAGENER moved HB 182 DO PASS as amended.
{Tape : 3; Side : B; Approx. Time Counter : 12.9 - 13.1}

Vote: The motion carried 15-2; REPS. ANDERSON AND WAGNER VOTING NO
{Tape : 3; Side : B; Approx. Time Counter : 13.1 - 17.4}

EXHIBIT 7
DATE 2/10/99
HB

Amendments to House Bill No. 182
1st Reading Copy

For the House State Administration Committee

Prepared by Sheri Heffelfinger
January 21, 1999

1. Page 68.
Following: line 4
Insert: "NEW SECTION. **Section 100. Coordination instruction.** (1) If House Bill No. 79 and [this act] are both passed and approved, then:

(a) [section 3] of [this act] is void.

(b) subsection (30) of [section 4] of [this act], amending 19-2-303, must read as follows: "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302."

(c) [section 21] of [this act], amending 19-3-103, is void.

(d) [section 24] of [this act], amending 19-3-401, must read as follows:

"Section 24. Section 19-3-401, MCA, is amended to read: **"19-3-401. Membership -- inactive vested members -- inactive nonvested members.** (1) Except as otherwise provided in this chapter, all employees shall become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting their employees' status as members ~~of the retirement system~~ as the board may require. An employee may become a member of the defined contribution plan only as provided in [sections 42 through 64].

(2) A member of the defined benefit plan with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member of the defined benefit plan with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement ~~system~~ plan. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) ~~Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the~~

~~break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.~~ A member of either the defined benefit plan or the defined contribution plan who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as service in determining eligibility for membership under this chapter.""

(2) If House Bill No. 119 and [this act] are both passed and approved, then [section 14] of [this act], amending 19-2-602, must read as follows:

"**Section 14.** Section 19-2-602, MCA, is amended to read: "**19-2-602. Refund of member's contributions on termination of service.** (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions ~~at the member's request.~~ on written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who terminates from service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination without a written application from the member.

(3) A nonvested member who terminates from service with accumulated contributions of $200 to $5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination, unless a written application is made pursuant to subsection (4).

~~(2)~~(4) Upon the written ~~request~~ application of a terminating member with $200 or more of accumulated contributions, the ~~division~~ board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the ~~division~~ board. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating

member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

~~(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.~~

~~(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.~~

~~(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request.~~"""

Renumber: subsequent sections

- END -

HOUSE OF REPRESENTATIVE
ROLL CALL

STATE ADMINISTRATION COMMITTEE

DATE Feb. 10

	NAME	PRESENT	ABSENT	EXCUSED
Rep	Allan Walters	—		
Rep	Don Hedges	—		
Rep	Frank Smith	—		
Rep	Darrel Adams	—		
Rep	Joan Andersen	—		
Rep	Tom Dell	—		
Rep	Bill Tash	—		
Rep	Jeff Mangan			✓
Rep	Doug Mood	—		
Rep	Brennan Ryan	—		
Rep	George Golie	—		
Rep	Doug Wagner	—		
Rep	~~Edith Clark~~	—		
Rep	~~Monica Lindeen~~	—		
Rep	~~Bill Thomas~~	—		
Rep	~~Toni Hagener~~	—		
Rep	Matt Brainard	—		
	Sheri Heffelfinger			

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **State Administration** report that **House Bill 182** (first reading copy -- white) **do pass as amended.**

Signed: Brainard
Representative Matt Brainard, Chair

And, that such amendments read:

1. Page 68.
Following: line 4
Insert: "NEW SECTION. **Section 100. Coordination instruction.** (1) If House Bill No. 79 and [this act] are both passed and approved, then:

(a) [section 3] of [this act] is void.

(b) subsection (30) of [section 4] of [this act], amending 19-2-303, must read as follows: "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302."

(c) [section 21] of [this act], amending 19-3-103, is void.

(d) [section 24] of [this act], amending 19-3-401, must read as follows:

"Section 24. Section 19-3-401, MCA, is amended to read:

"19-3-401. Membership -- inactive vested members -- inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees shall become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting their employees' status as members ~~of the retirement system~~ as the board may require. An employee may become a member of the defined contribution plan only as provided in [sections 42 through 64].

(2) A member of the defined benefit plan with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member of the defined benefit plan with less than 5

Committee Vote:
Yes 17, No 0.

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2/10
mp

years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement ~~system~~ plan. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) ~~Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.~~ A member of either the defined benefit plan or the defined contribution plan who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as service in determining eligibility for membership under this chapter.""

(2) If House Bill No. 119 and [this act] are both passed and approved, then [section 14] of [this act], amending 19-2-602, must read as follows:

"Section 14. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions ~~at the member's request.~~ on written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who terminates from service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination without a written application from the member.

(3) A nonvested member who terminates from service with accumulated contributions of $200 to $5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination, unless a written application is made pursuant to subsection (4).

~~(2)~~(4) Upon the written ~~request~~ application of a terminating member with $200 or more of accumulated

contributions, the ~~division~~ board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the ~~division~~ board. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

~~(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.~~

~~(4) An employer who has an employment related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.~~

~~(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request.~~"""

Renumber: subsequent sections

- END -

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE**, on March 5, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:
Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 182, HB 585, HB 616, 2/23/1999; HB 362, 2/22/1999
Executive Action: None.

HEARING ON HB 182

Sponsor: REP. CHRIS AHNER, HD 51, HELENA

Proponents: Mike O'Connor, Executive Director, Public Employees' Retirement System (PERS)
Kelly Jenkins, General Council, Public Employees' Retirement Board (PERB)
David Senn, Executive Director, Teachers' Retirement System
Pat Clinch, Montana Firefighters

Opponents: Mary Bryson, Department of Revenue

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 12 - 24}

REP. CHRIS AHNER, HD 51, HELENA, stated this bill was brought forth at the request of the Public Employees' Retirement Board (PERB). There are some general revisions in the bill. Last session I carried the Guaranteed Annual Benefit Adjustment (GABA) bill, which was retirement for the public employees and this is some general revisions of things that were missed last session.

Proponents' Testimony:

Mike O'Connor, Executive Director, Public Employees' Retirement System (PERS), said this is our housekeeping bill. Over the interim sessions we find legislation that may not be clear enough and terminology isn't consistent. Each session we have over a couple dozen retirement bills that affect the retirement statutes in Title 19. This bill tries to make the terminology and what we use in Title 19 consistent and tries to clear up confusing language. The majority of this bill is standardizing terminology. He handed out **EXHIBIT(1).** The bill clarifies what a retired member is. It also clarifies the subpoena rights of the board. We want to clarify that the board should have the authority to subpoena more than just medical records. The duties of the board are elucidated so they have the authority to delegate duties to various people. Also, if you are covered under a public agency, this clarifies the employment is cumulative. We have run into problems with that. We are clarifying that members can designate charitable organizations as their beneficiary on their membership card, which complies with the Internal Revenue Service (IRS). In the case of public agencies that have not been covered under PERS and want to be covered under PERS, the law currently says once the members vote on being covered, the governing body cannot take any action for at least twenty days. We are clarifying that they should not wait for twenty days before action is taken. Through our office policy it is understood that an individual retiring or terminating from service needs a thirty day break in service before they can receive their retirement benefits.

There are several general revisions in this bill. For PERS members, we discovered that an inactive vested member, someone with more than five years of service who is no longer working, their beneficiary is limited to a lump sum distribution in case that inactive member passed away. We think they should also be given the option of a monthly benefit. The actuary calculation assumes that when this inactive member passes away, the

beneficiary would take the best benefit available to the beneficiary, which in most cases would be the monthly benefit. I want to give you an explanation on how the retirement statutes are structured. We have a general chapter, Chapter Two, that covers all of the retirement statutes. Anything in Chapter Two would be things that are consistent with all retirement statutes. If it is an universal provision that would cover all retirement statutes, we try to clean up the statutes and put the general provisions in Chapter Two and leave the other chapters specific to each retirement system for specific items that are particular to those retirement systems. Currently, in each retirement system you cannot get duplicate service. It is consistent among all retirement statutes so we are trying to delete the stuff in specific chapters and move all of that into Chapter Two. We have discovered that some of the retirement systems do not allow a member to change their contingent annuitant, in case of a death or divorce. Those systems are the Judges', the Sheriffs', and the Game Wardens' and Peace Officers' Retirement Systems. All our other systems are allowed that and these systems should be allowed that as well. We also discovered that the Highway Patrol Officers' Retirement System and the Sheriffs' Retirement System do not allow a person to get credit while they are on Workers' Compensation. All of our other systems allow that so individuals on Workers' Compensation should get credit for that service. We added clarifying language in the Police Officers' Retirement System. We discovered if an individual with more than twenty years of service passes away, their beneficiary would be limited to half pay, which would be a reduction to the amount received if the member had retired. If that member passes away, the beneficiary should be allowed to have the same benefit the member would have had if he had retired. We are also clarifying vesting, the minimum retirement date and minimum benefit adjustment in the Firefighters' Unified Retirement System. Last session we changed all vesting in all retirement systems to five years, but the language needs to be cleaned up to clarify the minimum retirement date is five years and the minimum benefit adjustment should be left at ten years for those people who did not elect GABA.

{Tape : 1; Side : A; Approx. Time Counter : 24 - 39}

Kelly Jenkins, General Council, Public Employees' Retirement Board (PERB), stated, I will try to address this issue on a somewhat technical level to begin with and then give you an under-view at the end. I am going to use a summary, presented by the DOR, as an outline for my speech because they have a particular interest in this bill. In their testimony before the House State Administration Committee, they had some points to bring out and I think those points need to be addressed before this committee so that we can get a complete explanation of the

situation. The portion of the bill that contains the most significant change is in Section 96, Page 63, beginning at Line Three. It is a significant change for us and for the DOR. He handed out a printout from a web site of an organization **EXHIBIT(2)**. I will call the organization, for simplistic purposes, the Uniform Law Commissioners. This is a national organization that tries to develop laws that can be applied by the state so that, in part, we can avoid federalization of certain areas. There are a lot of Uniform laws and Montana seems to be on the cutting edge of the adoption of these types of laws. I think that is to Montana's credit in many instances. The Uniform Law Commissioners tried to establish a standard by which the states can start to mold their laws. Deviations from those standards should be considered very seriously. We are going to suggest a deviation is appropriate from the Uniform Unclaimed Property Act adopted by the Uniform Law Commissioners in 1995 and adopted by Montana as one of the first six states that adopted this in 1997. On this printout, the First Paragraph it says if there is property otherwise unclaimed by people, after a certain period of time the state gets to take that property and deposit it into the General Fund. It is a system for transferring property to the state. There are certain times when we lose track of individuals, sometimes with small amounts on account with us, sometimes with large amounts. We have difficulty in tracking them down when they do not make a claim for the benefits due to them from the retirement system. We have certain amounts, under the new version of the Unclaimed Property Act, that the DOR is claiming we should turn over to them, in order for it to be deposited into the State General Fund. In their summary, they said the Department believes a change in the Unclaimed Property Law establishes a bad precedent. We would agree with that. The change we are worried about and the change they are worried about are two different changes.

The change we are worried about is the one made in 1997. Prior to that time there was an Unclaimed Property Act in Montana, but as far as I know it had never been applied to the trust accounts that were part of the pension trust funds for the retirement systems administered by the state. The 1997 change, which is now claimed to apply to those trust accounts, is a bad precedent as far as we are concerned. There are very few states that have adopted this change, as you can see by the printout. It cannot be argued that Montana is one of the states without change to the Uniform Law adopted by the Commissioners. He handed out **EXHIBIT(3)**, out of the annotations of the Montana Code Annotated. Look at the 2nd Paragraph where it says Montana Enactment. I did not do a word by word comparison of the Unclaimed Property Act with the model adopted by the National Conference, but it seems to me the possibility of changes to that model law were contemplated at the time the annotations were written, because it

talks about the Uniform Unclaimed Property Act, most of which was based on language of the Uniform Unclaimed Property Act adopted by the National Conference in 1995.

The Unclaimed Property Act changes the way retirement systems have dealt with the Department of Revenue across the United States. We talked with people in Utah, who are doing a survey about the same issue. They contacted Nevada, Oregon, Washington, Wyoming, Colorado, Idaho, and California to find out what the mountain west states were doing in this area. They found out only Wyoming's pension trust funds were turning anything over to their DOR. It has been considered to be verboten to do that. In **EXHIBIT(4)** I have examples of the laws in a few of those states including California and Nevada. Also, to demonstrate it is not just a western phenomenon, I added Indiana's also. You can take a look at those and see what the varied states have said about that and the exceptions they have in their laws for Public Employees' Retirement System type assets. This is the kind of change we are urging here also. We had a change in 1997 in which we were unaware of at the time the change was adopted. Had we been aware we would have been certain to make the same arguments we are making now.

We have a competing interest of two state agencies, the DOR and the PERB. The DOR manages general revenue funds for the State of Montana. The PERB manages pension trust fund accounts and it does so for members and beneficiaries only. When you are weighing out these competing interests, how important is it to these two state agencies. I would suggest it is really not all that important to the DOR. Had it been important, they would have enforced the kind of laws they say have been on the books previously, and they would have enforced the law that has been on the books since 1997. They would have forced us to turn over unclaimed property during that period of time. They have made no efforts to do so, to my knowledge, in any of this period of time. It is critical to the PERB. It goes right to the heart of what the PERB is suppose to be doing. The heart is contained in Article Eight, Section Fifteen of the Montana Constitution, which was adopted by a constitutional amendment, approved by the voters in 1994 and made effective January First, 1995.

There are three reasons why the Montana Constitution mandates the change we are suggesting in this bill. The other thing they indicate in their outline is that there may be a negative impact in the General Fund if you allow the change we are having in this bill. In **EXHIBIT(5)**, Article 8, Section 15, Subsection 1, says, "Public retirement system assets, including income, shall not be encumbered, diverted, and so on. Not only are the assets of the pension trust funds not subject to diversion, including diversion to the State General Fund, but the income from those assets is

critical. If DOR takes that money, they cannot invest it in the stock market. Only the Public Employees' Retirement Systems can invest in the stock market under the Constitution at this time. We can get the best return possible for those monies. The DOR cannot possibly do that. Secondly, Subsection 1 says the PERS assets, "shall be held in trust to provide benefits to participants and to defray administrative expenses". Under the Unclaimed Property Act these monies given to the state are not held in trust, they are held in the General Fund. That has a couple of different impacts. First, it is contrary to the exact language in the Constitution, the clear authority of the Constitution. Also, it means they are not responsible for getting the best return possible on those monies and they are not responsible for proper administration. We are responsible for those things.

In Subsection 2, "the governing boards of public retirement systems shall administer the system," therefore, we have a responsibility in the PERB to administrate the system. That is the core of what we do. It does not say, except when the DOR wants to assert authority over the system assets because of some artificial standard set up in the statute. It gives a Constitutional requirement that we are required to do the things we are suggesting by the amendment in this bill.

The question is, if I am that certain, why don't we just go to court and get this thing resolved? I have two answers to that question. First of all, we have extremely low cost of administration in the Public Employees' Retirement Systems and we are extremely proud of those. You all received an annual report and you will see that the cost of administration for our retirement systems is .1% of assets. To provide you a point of comparison, the costs of TIAA-CREF, the private party that administers the Optional Retirement Plan (ORP) for the University System, are almost three times what our costs are. We keep those costs low by avoiding conflict that is going to be a costly thing to resolve. We do not want to spend five thousand to ten thousand dollars of my time and effort and the retirement system's effort to resolve this, because the problem can be resolved here by excluding this small portion of what the DOR is trying to do.

Secondly, the court would have to strike in a way that would be unacceptable to the DOR and is really unreasonable as far as what we are trying to do. If you take a look at Page 63, Line 3 through 8, there is a whole Subsection that talks about individual retirement accounts, defined benefits plans, other accounts or plans that are qualified for tax deferral. Those are the kinds of accounts the Public Employees' Retirement Systems are. They are qualified under Section 401 A, of the Internal

Revenue Code. If a court decided this section is unconstitutional under the Montana Constitution, to allow transfer of public retirement system assets to the DOR, they would have no option but to strike the entire subsection in there. They do not have the ability like this committee does and like the legislature does, to interline words into the subsection to so we can establish a very narrow exception. We are asking for a very narrow exception to avoid a broader problem. I am entirely confident that our Constitutional argument stands and that this statutory provision should not remained unchanged.

{Tape : 1; Side : A; Approx. Time Counter : 39 - 53}

David Senn, Executive Director, Teachers' Retirement System, stated, I want to give you a couple of examples of the types of things that happen every year in the Teachers' Retirement System. We have members that come to Montana, teach and leave the state. When they reach age sixty-five, the typical Social Security age, we hear from them. We may have lost track of them for several years. They, however, have not forgotten us and they want that retirement benefit when they are ready to retire. Just recently we had a case of an individual who left one of the local school districts at the time she had an illness. No one thought about applying for disability retirement benefits. She was fully eligible and was not able to teach.

Since then she has recovered somewhat and she did not forget about her retirement plan. She came in our office last summer and we discovered she was eligible for disability benefits, with about ten years retroactive. We had an account of about twenty thousand dollars that had we determined was abandoned property and sent off to the DOR, that is all that would have been there. We owed her retroactive benefits of almost ninety thousand dollars, which we paid to her. Those kinds of things happen every year. We make those retroactive payments when people come in and apply and we have an obligation to do that. That is what state law mandates these people.

I think we can work with the DOR with a lot of these things. They have addresses we would like to have. We have lost track of many of these people. We would like to contact them and let them know they have an account. There is some give and take here and some things we can do for each other. We don't want to be transferring money on accounts just because we haven't had contact with them. It is important the retirement system maintain those assets and we maintain that protection for those retirement benefits, so people can apply whenever they retire.

Pat Clinch, Montana State Council of Professional Firefighters, said we are in support of **HB 182** primarily because of a drafting oversight in last year's Firefighter Retirement System Pension bill. This would correct that oversight and change the vesting period from ten years to five years.

Opponents' Testimony:

Mary Bryson, Director, Department of Revenue, stated, I will take you through the handout **Kelly Jenkins** referred to **EXHIBIT(6).** The DOR rises in opposition to **HB 182** but we simply oppose the changes found in Section 19 and Section 96 of the bill. The proposed change exempts an account or plan established by Title 19 (public retirement plans) from the provisions of Unclaimed Property Laws. We believe and continue to believe such an exemption will set bad precedent and encourage other holders of unclaimed property to seek exemption from the law, especially other holders in forms of retirement systems or insurance companies that hold annuity forms on behalf of their claimants. We believe that, currently, the Abandoned Unclaimed Property Statutes do provide a mechanism whereby a single point of contact is available for the beneficiaries who will be claiming the property of individuals who have property that has been abandoned. This change in the code would allow for multiple contacts they would be required to pursue. We believe the Department is also better equipped to maintain owner records. We have a vast amount of information of individuals within the state, those that are tax paying entities as well as other employers. We think allowing further exemptions will result in a negative impact on the General Fund. Our reference to a negative impact on the General Fund is that those other holders may pursue exemptions and that would result in further erosion of the Unclaimed Property Statute.

I will give you some further background on what the Unclaimed Property Laws are and why they exist. I know **SEN. HARGROVE** is very familiar with them, as he carried the legislation in the 1997 session to bring Montana into adopting the model. The Unclaimed Property Laws are designed to meet three goals: to reunite lost owners with the property that is rightfully theirs and this is where I differ with **Mr. Jenkin's** categorization of the Department's interest in this matter. Our interest in administering the Abandoned Unclaimed Property Laws is to the claimant, not the state. We are, under statute, required to try to reunite those lost owners with their property. The laws are also to protect the holder from subsequent claims by the owner after the property is transferred to the state; and to ensure that any economic windfall is for the benefit of the state and its citizens and not for the holder. There is a dormancy period in the statutes to determine when the property is to be turned

over to the state. It is approximately three years. Once it has been turned over to the state, the property is held in perpetuity on behalf of the rightful owner or that owner's heirs. Monies received are deposited to the General Fund and correspondingly, refunds to an owner or their heirs are paid from the General Fund. That is the basis of the Unclaimed Property Statutes.

What are some of the performance standards related to Unclaimed Property Laws? Approximately two million dollars is received each year from holders of unclaimed property. Approximately eight hundred thousand to one million of that is returned each year to owners or their heirs. We have four thousand reports filed each year by holders of unclaimed property. Currently, this state is holding money for approximately one hundred and thirty thousand owners who we have not yet been able to locate. The total value of the property still unclaimed is approximately $16,000,000 and we do maintain those records. The unclaimed Property Laws have been in existence in Montana since 1963. The changes made in 1997 were to bring us into conformity with the model statute, but it did not significantly change the intent, view, or policy adopted by the legislature as it related to unclaimed property.

The Department does take issue with whether the Montana Constitution mandates the changes proposed by the Retirement Division in Sections 19 and 96. **Mr. Jenkins** passed out copies of this earlier. We believe the Unclaimed Property Laws are not in conflict with the Constitution because they do not encumber, divert, reduce, or terminate public retirement system assets. Once those assets have been identified and they have determined the eligibility of an individual in his retiring, they are no longer assets of the system. They are rightfully assets of the individual, the beneficiary or the retiree. There is not a conflict in that regard. Unclaimed Property Laws only come into play three years after the earliest of one of the following events has occurred: the date of distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty. There are some very specific requirements and even in our retirement system statutes, there is a mandated age at which an individual can apply for retirement system benefits. Once they reach a certain age, it is the responsibility of the retirement system to try to find those individuals.

We believe the change to the Unclaimed Property Law establishes a bad precedent. This is not necessarily because it is the retirement system that is doing it, but that you are allowing an

exemption to the Unclaimed Property Statute which would then allow, or encourage, or provide an opportunity for other holders of unclaimed properties to seek a similar exemption. We do not believe the Constitution mandates the change. The negative impact on the General Fund would be if further exemptions are allowed to the Unclaimed Property Statutes.

When we indicated to the retirement systems we would be opposing this legislation, we tried to work out amendments with them. My understanding is we had an agreement with the retirement systems regarding amendments to this legislation and an administrative agreement as to how we would handle retirement system unclaimed property. It is unfortunate you have been presented with sister agencies in disagreement. I have amendments **EXHIBIT(7)**. I ask the committee to give the amendments careful consideration. Basically, we would like to leave Section 19 and Section 96 the same as it currently is.

Questions from Committee Members and Responses:

SEN. HARGROVE asked what happened in the House? Were there amendments in the House? **REP. AHNER** replied, they passed the bill as is. **SEN. HARGROVE** asked, were the same things brought up there? **REP. AHNER** stated, yes.

SEN. HARGROVE asked, do these retirement funds go into the General Fund? **Mary Bryson** said the retirement system is correct in indicating none of the retirement systems have turned over any unclaimed property to the State of Montana, but any unclaimed property turned over by any of the holders of unclaimed property is deposited in the General Fund. **SEN. HARGROVE** stated it is debatable if part of the Constitution says income and actuarially required contributions. Do you think there is a Constitutional challenge there? **Mary Bryson** said we don't believe the Constitution would mandate retirement systems to be exempt from the Abandoned Property Statutes. We do not believe there is a Constitutional issue.

SEN. HARGROVE asked, would there be a cost in maintaining these funds? **Mr. Jenkins** replied, we retain those funds and it is our responsibility to administer those funds.

{Tape : 1; Side : B; Approx. Time Counter : 53 - 77}

Mr. Jenkins continued, I suspect there is not a great deal of cost because the numbers are not huge in relation to the overall size of the assets. We still have to administer the rest of the assets and these just ride along. I am sure there is some cost

because that is our responsibility and all of our costs are administering retirement system assets.

SEN. HARGROVE asked, how much money are we talking about? **Mr. Jenkins** stated, I don't know. It has never been split out. We have viewed it as being our responsibility not to turn over those funds. I am not sure there is a way to quantify that. If there is, perhaps **Mike O'Connor** or **David Senn** could answer that question. It has never been split out so we don't know. We hope it is not a great deal and we have mechanisms in place with our Qualifications bill for PERB and the Teachers Retirement System that will increase our tracking. We have talked with the DOR about working with them to identify people who are giving them names and addresses, so that they can tell people when inquiries are made. We hope to reduce the amount but we do not know precisely what the amount is.

SEN. HARGROVE asked, has the PERB always maintained those funds? Did the 1997 changes in statute bring up the question of whether they should be with the Retirement Board or the DOR and the two agencies cannot get along? **Mr. Jenkins** replied, there may have been provisions that could have arguably been applied to the retirement systems previously, but they never were by the DOR or the PERB. When this provision was passed, it became more clearly applicable to the retirement systems. There was another provision in the Uniform Probate Code that we ended up going to court over. We started looking at other situations and came across this. It appears that in the adoption of some of these Uniform laws, they have not considered the possibility of a state having a strong Constitutional provision as Montana does.

SEN. HARGROVE said, I would like to refer that same question to **Mary Bryson**. **Mary Bryson** stated, our position has been and will continue to be that the existing Unclaimed Property statutes did apply to the retirement systems. This is an area within the Department where we had requested additional resources for and have not received those resources, so it is not that we have no interest in pursuing this. We spend most of our time pursuing the identification of those rightful owners and not as much time going out and auditing those holders of unclaimed property, to see if they are maintaining any of that property that should be turned over to the state so we can pursue the rightful owners. We did not pursue with the retirement system, in that regard, because at least we knew where it was and could pursue it if absolutely necessary. We thought we had an agreement as to how we would share information and resolve that. Our position is that this change to the statute would be the wrong way to go.

SEN. WELLS said, according to your handout, the amount of money DOR receives each year is around $2,000,000 and about $800,000 to

$1,000,000 is returned. Therefore, we are apparently gaining about $1,000,000 a year in the system. Has any of this money been from the retirement systems? **Mary Bryson** stated, we receive money from private retirement systems. The state retirement systems have not turned over any abandoned property.

SEN. WELLS said, you asked for resources to handle the assets if DOR were to get the state retirement funds. We heard testimony that it would not cost the retirement system any additional money, but if we approved your amendment it would cost additional funds. **Mary Bryson** stated, no, we requested additional resources to pursue auditing the holders of abandoned property, in order to have that property turned over. Also, to further pursue identifying the owners of that property. This change in statute would have no impact on that. This money is turned over to the General Fund. We do not administer the investments in the General Fund; that is done by the Board of Investments and the State Treasury. There are no resource or fiscal impact to DOR as it relates to the administrative cost of this program.

SEN. WELLS said, on Page Three of your handout it says, "the Unclaimed Property Act is designed to meet three goals". Can you give me some examples of the economic windfall you are referring to in the third goal? **Mary Bryson** explained, that would refer to, for instance, property left in a safety deposit box that the financial institution took ownership over. In such a case, the financial institution gets the economic windfall, whereas, they may not want to pursue trying to identify the owner of that property or the heir to that property. They gain that benefit and the benefit should be to the state and its citizens, not to the holder.

SEN. WELLS said, listening to DOR and how they are protecting lost owner's rights from various kinds of properties that are held by different kinds of institutions, it sounds like there is a certain amount of protection here that is necessary. Do you see that it is an economic windfall to the retirement system if you keep the funds and do not find the owners of these funds or the rightful heirs? Do you think there is a possibility that you could not find those people as well as DOR? **Mr. Jenkins** stated, I think DOR brings things to this situation that we need to take advantage of, which we have not taken advantage of as well as we could. They have addresses for people who have filed tax returns and have made claims. We have no problem with working with them to arrive at that kind of cooperative agreement. The problem we have is in turning over the money. I don't consider it an economic windfall, but we know assets of the system, by the Constitution, are supposed to be held in trust to provide benefits to participants and beneficiaries and to defray administrative expenses. There are only two things that should

happen to those assets of the system. When they talk about economic windfalls and what the General Fund will receive out of this, they are talking about taking funds payable to a beneficiary and putting them into the General Fund, which is exactly the kind of thing Constitutional language is designed to prohibit.

Mr. Jenkins said, as a final point, I think it is important to realize we are both state agencies in a sense, to the extent that there are people we absolutely cannot find through our efforts in a cooperative arrangement in sharing addresses with DOR. Ultimately, that money is absorbed back into the pension trust fund or continues to remain the pension trust fund. It would be applied to defray administrative expenses. Federal tax law says that is the only way we could apply; therefore, the administrative expenses are reduced. The funding for the retirement system comes exclusively from public entities; State and Local Governments and the matching amount from employees. The administrative expenses can be absorbed by money retained in the fund, rather than turned over to the General Fund. That becomes money the General Fund or some other Local Government fund does not have to pay back in to pay administrative expenses. You are not coming out ahead by giving money to the General Fund that should remain in the trust fund. You are potentially depriving beneficiaries of their benefits in the full amount that their benefits are supposed to be, and you are testing the constitutional language.

SEN. TESTER asked, have you received any private retirement system money from the unclaimed? **Mary Bryson** replied, I don't know.

SEN. TESTER asked, how do you find owners and is this something you actively pursue? **Neil Peterson, DOR**, stated, I administer the unclaimed property. There are number of different things we do and states do collectively to try to elevate people's interest in unclaimed property. Currently, we advertise all property received over the last year in all the major newspapers. Three times a year we are able to do an article in a major state newspaper or a television station, saying we are holding property and we have these types of property. Also, the National Association of Unclaimed Property Administrators has a web page with links to each state's web page. We are planning to put our property list on that page also, so that people can check on a regular basis. We get calls on a daily basis from an individuals because they know to go to the DOR to check for unclaimed property.

SEN. TESTER asked, do you make any specific efforts to go to the individual? **Mr. Peterson** answered, yes we do on some of our

larger amounts that are turned over. We make some specific searches to try to find an address or an heir for that particular individual. **SEN. TESTER** asked, do you presently share addresses with other state agencies as far as where these people are located? **Mr. Peterson** replied, we do, to the extent we are permitted to share information with another agency under confidentiality statutes. I do not believe we have, in statute, the ability to share addresses with the Retirement Board.

SEN. TESTER asked, are the monies from the unclaimed property placed in the General Fund invested? **Mary Bryson** explained, they become part of the General Fund pool. Therefore, they are invested at the rates and earn the interest that is attributed to the General Fund. **SEN. TESTER** inquired, do you have any idea what that was for last year? **Mary Bryson** replied, around eight percent, but I don't know for sure.

SEN. TESTER asked, who initiates the drawing of the retirement funds? Is it initiated by the worker? **Mr. Jenkins** stated yes. **SEN. TESTER** asked, at what point in time do you make the determination that these are unclaimed monies, or would you? **Mr. Jenkins** answered, we have someone who keeps track of death lists. We do comparisons with Social Security records. As to the specifics of administration, I would prefer that **Mike O'Connor** comment on that. **Mike O'Connor** explained, we are doing a more pro-active approach. We are going to try to locate these people, when they terminate, for individuals with less than $5,000. Currently, we are looking for individuals on an individual basis to get them the money. The Board's primary concern is to get the money to the members. We review our membership with the Social Security death list so we know people who have passed away so we can locate the beneficiaries.

SEN. TESTER said, assuming you got some money from a retirement system, whether private or public, and the person suddenly appeared, would you give that money back with interest? **Mary Bryson** stated, no, we would give them back the amount of money that was unclaimed. One of the questions that exists with the retirement systems deals with the annuity and how you determine what amount will actually be remitted. That is one of the issues that we have been discussing with the Retirement System.

SEN. HARGROVE asked, does it make any difference to you at PERS, as far as this amendment is concerned? **Mr. O'Connor** said, the Board is fiduciaries of this plan and they are trying to protect the assets of the plan. Their primary concern is making sure the money in the plan gets to the members of the plan. Our concern is that we cannot transfer money to the General Fund because of situations like the one **David Senn** talked about. He had to pay

out $90,000, but he only had $20,000 of contribution. We fund retirement systems on investment return of that money, as well as contributions. We earn almost nineteen percent on that money and that is what funds those retirement benefits.

{Tape : 1; Side : B; Approx. Time Counter : 77 - 88}

SEN. COLE asked, do you feel there is a possibility of working this disagreement out through some amendments? **Mr. O'Connor** replied, we would like to work with DOR because they have the addresses of people. We would like to be able to work out an agreement. It looks bad to have two state agencies quarreling and we don't like it anymore than they do.

Closing by Sponsor:

REP. AHNER said when this bill was over in the House State Administration Committee, it was originally a little housekeeping bill. Then DOR came in opposing the bill and that was the first I had known there was some opposition and their reasons for it. In the House State Administration Committee, they chose to maintain that money in the trust versus putting it in the General Fund. That is why it has come before you in this fashion. I did not realize the amount of amendments and the passion which brought this particular issue to the housekeeping bill. I will leave that up to your wisdom and your discretion as to whether to leave this in the pension trust at nineteen percent interest or put it in the General Fund.

HEARING ON HB 362

Sponsor: REP. TRUDI SCHMIDT, HD 42, GREAT FALLS

Proponents: Joe Kerwin, Deputy of Elections, Secretary of State's Office
Robert Throssell, Montana Association of Clerks and Recorders
Hal Manson, American Legion of Montana

Opponents: None

Opening Statement by Sponsor:

REP. TRUDI SCHMIDT, HD 42, GREAT FALLS, stated this is a bill that expands voting opportunities for United State personnel that are stationed overseas, including military people, religious groups, welfare agencies, and United State citizens. We received

SENATE STATE ADMIN.
EXHIBIT NO. 1
DATE 3-5-99
BILL NO. HB182

TESTIMONY IN SUPPORT OF
HB 182

on behalf of the
PUBLIC EMPLOYEES' RETIREMENT BOARD

Presented by
Mike O'Connor, Executive Director
Public Employees' Retirement Systems

Change in interpretation of state and federal laws through decisions in the courts requires a constant fine-tuning of our public retirement systems. Rather than clog the Legislative process with several small proposals, the Board has requested one "general revision" bill that will make several "housekeeping," but necessary, changes. None of the proposals will have an actuarial impact. None require increased funding. These changes include the following:

-- Use standard and consistent terminology. **Section 6, 7, 8, 10, 11, 13, 14, 16, 20, 23, 25, 30, 32, 33, 34, 38, 39, 41, 45, 47, 50, 51, 52, 57, 59, 64, 67, 70, 73, 74, 75, 76, 77, 79, 83, 84, 85, 86, 87, 89, 90, 91, 92, 93, 94, 95**

-- Clarify that the retired Board member is a member of PERS and not an inactive member of PERS. **Section 1**

-- Treat all cities who contract for retirement coverage under MPORS the same and allow them to include WorkComp salary in the calculation of Final Average Compensation and receive credit for the unreported service. (19-9-706 Compensation when members receive disability compensation.) **Section 2**

-- This change accounts for the fact a retirement system could have more than one plan. **Section 3**

-- Definitions section. Repeal the definition of "division" and replace with "board." Clarify definitions of "Retired," "Retirement system" and "Written Application" **Section 4**

-- Clarify that the Board subpoena rights beyond the current limitation of only disability determinations. Provides the Board the ability to delegate powers and duties of the Board. **Section 5**

-- Clarify that employers submit reports on all employees not just members. **Section 12**

-- State that covered employment is cumulative. **Section 15**

-- Charitable organizations and trusts for the benefit of natural living persons. **Section 17**

-- Clean up language regarding payments in the event the designated beneficiary does not survive the payment recipient. This is what the estate of the member would receive. **Section 18**

-- State the retirement system is a retirement plan. **Section 21, 40, 46, 56, 63, 71, 80**

-- Clarify the legislative body to take action within 20 days of their action once the legislative body approves resolution to be covered for PERS. **Section 22**

-- Clearly state that a 30-day break in service is needed to terminate service. Our procedures imply this. **Section 24**

-- For Employees working less than 960 hours in a year. Delete part-time and state that hours with all employers are cumulative. Clarify which employees have the option of declining membership. **Section 26**

-- Clarify language of the type of previous service a member may qualify. Previous optional service that an employee declined to be a member and service before the employer's contract coverage.**Section 27**

-- Delete language that prohibits duplication of service. The main chapter (Ch 2)19-2-703 prohibits duplication of service in all systems. **Section 28, 29, 53, 54, 60, 61, 68, 72, 82, 98**

-- Require the employer to also certify the number of hours worked and compensation paid to a working retiree. **Section 35**

-- Allow the designated beneficiary of a vested inactive member to receive a survivorship benefit instead of the lump sum. **Section 36**

-- Regarding death payments change language to include all payments made from a member's account. **Section 37, 44, 48, 58, 69**

-- Delete (2) which deals with involuntary termination regarding pre-1983 appointment or election of a judge to office. **Section 42**

-- Provide Judges, Sheriffs', and Game Wardens and Peace Officers' Systems the provision that allows retired members to change the contingent annuitant upon death or divorce of a contingent annuitant. **Section 43, 62, 66**

-- Adds language that members must submit a written application to the Board for a reconsideration of a Board decision. **Section 49, 65,**

-- Provide members of the Highway Patrol Officers' Retirement System and Sheriffs' Retirement System with the ability to purchase service credit for periods of compensated leave due to work-related injuries compensated by Workers' Compensation benefits. **Section 55**

-- Add language explaining the survivor's benefit of a Police Officer if the member completed more than 20 years of service. **Section 78**

-- Clarify vesting, minimum retirement date and minimum benefit adjustment in Firefighters Unified Retirement System. The 1997 session reduced vesting to 5 years, but all the language was not cleaned up. The minimum retirement date should be 5 years but the minimum benefit adjustment for members not electing GABA should be left at 10 years. **Section 81, 88**

SENATE STATE ADMIN.
EXHIBIT NO. 2
DATE 3-5-99
BILL NO. HB 182

A Few Facts About
THE UNIFORM UNCLAIMED PROPERTY ACT (1995)

PURPOSE: This act provides a system for transferring intangible personal property and personal property in safety deposit accounts, held by an entity or person other than the rightful owner, to the State when it is deemed abandoned by the rightful owner. The State holds the property for the rightful owner in perpetuity.

ORIGIN: Completed by the Uniform Law Commissioners in 1995. This Act supersedes the Uniform Disposition of Unclaimed Property Act of 1954 and the Uniform Unclaimed Property Act of 1981.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:	Louisiana Maine Michigan	Montana New Mexico West Virginia
1999 INTRODUCTIONS:	Arizona Arkansas Kansas	Indiana Mississippi

For any further information regarding the Uniform Unclaimed Property Act, please contact John McCabe or Katie Robinson at 312-915-0195.

(3/1/99)

MONTANA
SENATE STATE ADMIN.
EXHIBIT NO. 3
DATE 3-5-99
BILL NO. HB182

Mont. Code Anno., § 70-9-802 (1998)

MONTANA CODE ANNOTATED

*** THIS DOCUMENT IS CURRENT THROUGH THE 1998 SESSION ***

TITLE 70 PROPERTY
CHAPTER 9 DISPOSITION OF UNCLAIMED PROPERTY
PART 8 UNIFORM UNCLAIMED PROPERTY ACT

Mont. Code Anno., § 70-9-802 (1998)

70-9-802 Definitions.

In this part, unless the context requires otherwise, the following definitions apply:

* * * *

COMMENTS (in part):

* * * *

The Act provides exclusively for the disposition of unclaimed intangible property and does not apply to tangible property, with one exception: Section 3 70-9-804 applies to tangible property contained in safe deposit boxes. Paragraph (12) (13), defining property, is not intended as a substantive addition to the coverage of the 1981 Act. It is, however, intended to be all-inclusive; the descriptions of property interests that are set forth as examples are not limiting, but are stated to help holders identify kinds of property interests which otherwise may be overlooked. Thus, "property" is not the check, note, certificate or other document that evidences the property interest, but the underlying right or obligation. See Blue Cross of Northern California v. Cory, 120 Cal. App. 3d 723, 174 Cal. Rptr. 901 (1981) ("right to be paid" is the "'intangible personal property' (or 'chose in action') . . . which is recognized in the UPL"). The requirement that the right be "fixed and certain" excludes unliquidated claims from the coverage of the Act, such as disputed tort claims.

Montana Enactment: Chapter 124, L. 1997, enacted the Uniform Unclaimed Property Act, most of which was based on the language of the Uniform Unclaimed Property Act (1995), approved by the National Conference of Commissioners on Uniform State Laws in 1995. The commissioners' comments are those of the National Conference of Commissioners on Uniform State Laws and have been edited to show only those comments or portions of comments applicable to those parts of the 1995 Uniform Act adopted in Montana. The "Source" compiler's comments cite the comparable section or subsections of the Uniform Act.

Severability: Section 33, Ch. 124, L. 1997, was a severability clause.

Effective Date: Section 36, Ch. 124, L. 1997, provided: " This act is effective July 1, 1997."

SENATE STATE ADMIN.
EXHIBIT NO. 4
DATE 3-5-99
BILL NO. SB 182

Cal Gov Code § 21500 (1999)

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*** THIS SECTION IS CURRENT THROUGH THE 1999 SUPPLEMENT (1998 SESSION) ***

GOVERNMENT CODE
TITLE 2. Government of the State of California
DIVISION 5. Personnel
PART 3. Public Employees' Retirement System
CHAPTER 14. Death Benefits
ARTICLE 1. General Provisions

Cal Gov Code § 21500 (1999)

§ 21500. Procedure with respect to unclaimed benefits

(a) Whenever a person entitled to payment of a member's accumulated contributions or any other benefit fails to claim the payment or cannot be located or a warrant in payment is canceled pursuant to Section 17070, the amount owed from the retirement fund shall be administered in accordance with subdivision (c).

(b) Whenever the amount of a benefit payable by this system cannot be determined because the recipient cannot be identified or information necessary to determination of the benefit to be paid cannot be ascertained, the accumulated contributions of the member on whose account the benefit is payable shall be administered in accordance with subdivision (c).

(c) Notwithstanding any provision of law to the contrary, the amounts described in subdivisions (a) and (b) shall be held, or if a warrant has been drawn the warrant shall be redeposited in the retirement fund and held for the claimant without further accumulation of interest, and the redeposit shall not operate to reinstate the membership of the person with respect to whose membership the refund or benefit was payable in this system. If the proceeds are not claimed within four years after the date of redeposit, they shall revert to and become a part of the reserve established pursuant to Section 20174. Transfer to this reserve shall be made as of the June 30th next following the expiration of the four-year period.

The board may at any time after transfer of proceeds to the described reserve upon receipt of proper information satisfactory to it, return the proceeds so held in reserve to the credit of the claimant, to be administered in the manner provided under this system.

(d) For lump-sum death benefits administered in accordance with subdivision (c), where this system has made a diligent effort to identify or locate the person entitled to payment and that person cannot be found, payment may be made to the next entitled beneficiary or beneficiaries, upon receipt of valid claims, if two years have passed since the date of death. Payment made by this system in good faith and in reliance on those claims, notwithstanding that it may fail to discover a person otherwise entitled to share in the benefits, shall constitute a complete discharge and release of this system for further liability for the benefits.

HISTORY:
Added Stats 1995 ch 379 § 2 (SB 541).

NOTES:
FORMER SECTIONS:
Former § 21500, similar to present Gov C § 21266, was added Stats 1947 ch 1140 § 33, operative October 1, 1947, and repealed Stats 1995 ch 379 § 1.

HISTORICAL DERIVATION:
Former Gov C § 20208, as added Stats 1974 ch 390 § 2, amended Stats 1992 ch 524 § 1.

CROSS REFERENCES:
Deposit of unclaimed property: CCP §§ 1310 et seq.

Nev. Rev. Stat. Ann. § 154.010 (1997)

NEVADA

NEVADA REVISED STATUTES ANNOTATED
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*** THIS SECTION IS CURRENT THROUGH THE 1997 SUPPLEMENT ***
*** (SIXTY-NINTH (1997) SESSION) ***

TITLE 12. WILLS AND ESTATES OF DECEASED PERSONS
CHAPTER 154. ESCHEATS
PROPERTY ESCHEATING TO THE STATE

Nev. Rev. Stat. Ann. § 154.010 (1997)

§ 154.010. When estates escheat; escheated estates must be used for educational purposes

Estates shall escheat to and be vested in the State of Nevada for educational purposes if any person dies or has died, within this state, seised of any real or personal estate, and leaving no heirs, representatives, devisees or legatees capable of inheriting or holding the same, and in all cases where there is no owner of such estate capable of holding the same. **Any balance remaining in a retired employee's or beneficiary's individual account under the public employees' retirement system is not an estate within the meaning of this chapter.**

HISTORY: 1941, p. 234; CL 1929 (1941 Supp.), § 9882.311; 1977, p. 1598.

NOTES:
CONSTITUTION. --As to requirement that escheated estates be used for educational purposes, see Const., Art. 11, § 3.

CROSS REFERENCES. --As to uniform disposition of abandoned or unclaimed property, see NRS Chapter 120A. As to escheat to state in event of intestate succession, see NRS 134.120. As to escheat of unclaimed wages or commissions, see NRS 607.170. As to unclaimed escrow funds, see NRS 645.180.

OPINIONS OF ATTORNEY GENERAL

NONRESIDENTS' NEVADA PROPERTY. --Where a California resident who dies intestate and without heirs owns real property in this state, such property or proceeds of sale thereof escheat to the state. AGO 387 (2-20-1967).

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES. --As to the Uniform Disposition of Unclaimed Property Act, see NRS Chapter 120A. As to escheat, see NRS 134.120.

Burns Ind. Code Ann. § 32-9-1.5-15 (1998)

INDIANA

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*** THIS SECTION IS CURRENT THROUGH THE 1998 SUPPLEMENT
*** (1998 REGULAR SESSION) ***

TITLE 32. PROPERTY
ARTICLE 9. LOST AND UNCLAIMED PROPERTY
CHAPTER 1.5. UNCLAIMED PROPERTY ACT

Burns Ind. Code Ann. § 32-9-1.5-15 (1998)

§ 32-9-1.5-15. "Person" defined

As used in this chapter, "person" means an individual, a corporation, a business trust, an estate, a trust, a partnership, an association, a joint venture, a government, a governmental subdivision, agency, or instrumentality, a public corporation, a joint or common owner, or any other legal or commercial entity.

HISTORY: P.L.31-1995, § 7.

NOTES:
OPINIONS OF ATTORNEY GENERAL. The Public Employees' Retirement Fund, a retirement system supported by the State of Indiana, is not a "person" or other entity, as defined in the former Unclaimed Property Act, which must transfer State benefit warrants to the Property Custody Fund after a presumption of abandonment arises. 1983, No. 83-4, p. 21.

Burns Ind. Code Ann. § 32-9-1.5-16 (1998)

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*** THIS SECTION IS CURRENT THROUGH THE 1998 SUPPLEMENT
*** (1998 REGULAR SESSION) ***

TITLE 32. PROPERTY
ARTICLE 9. LOST AND UNCLAIMED PROPERTY
CHAPTER 1.5. UNCLAIMED PROPERTY ACT

Burns Ind. Code Ann. § 32-9-1.5-16 (1998)

§ 32-9-1.5-16. "Political subdivision" defined

For purposes of section 49 [IC 32-9-1.5-49] of this chapter, "political subdivision" includes any Indiana municipality, county, civil township, civil incorporated city or town, public school corporation, university or college supported in part by state funds, or any other territorial subdivision of the state recognized or designated in any law, including judicial circuits, a public utility entity not privately owned, special taxing district or entity, and public improvement district authority or entity authorized to levy taxes or assessments. The term does not include any retirement system supported entirely or in part by the state.

HISTORY: P.L.31-1995, § 7.

VIII, Sec. 12, Mont. Const.

Director of Department of Administration as ex officio State Treasurer, 2-15-1002.

State Finance, Title 17.

Budgeting and appropriations, Title 17, ch. 7.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Debate — committee report, Trans. 790 through 792, 797, 1366, 1376, 1517 [referred to as article iv (bicameral), section 15, and (unicameral), section 16].

Debate — style and drafting report, Trans. 1627, 2923, 2924, 2926 through 2928.

Final consideration, Trans. 1907, 1908.

Text as adopted, Vol. II 1098.

Section 15. Public retirement system assets. (1) Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.

(2) The governing boards of public retirement systems shall administer the system, including actuarial determinations, as fiduciaries of system participants and their beneficiaries.

History: En. Sec. 2, Const. Amend. No. 25, approved Nov. 8, 1994.

Section 16. Limitation on sales tax or use tax rates. The rate of a general statewide sales tax or use tax may not exceed 4%.

History: En. Sec. 1, Const. Amend. No. 27, approved Nov. 8, 1994.

SENATE STATE ADMIN.
EXHIBIT NO. 5
DATE 3-5-99
BILL NO. HB182

SENATE STATE ADMIN.
EXHIBIT NO. 6
DATE 3-5-99
BILL NO. HB182

M E T Δ
... meeting the challenge

HB182

Testimony of the Department of Revenue in Opposition to Amending Montana's Unclaimed Property Laws

March 5, 1999

Why does the Department oppose HB182?

- The Department opposes only the changes found in §19 and §96 of HB182.
- The proposed change exempts an account or plan established by Title 19 (public retirement plans) from the provisions of Unclaimed Property Laws
- Such exemption will set bad precedent and encourage other holders of unclaimed property to seek exemption from the law
- A single point of contact for owners
- The Department is better equipped to maintain owner records
- Allowing further exemptions will result in a negative impact on the General Fund

What are Unclaimed Property Laws?

- Unclaimed Property Laws are designed to meet three goals:
  - to reunite lost owners with the property that is rightfully theirs;
  - to protect the holder from subsequent claims by the owner after the property is transferred to the state; and
  - to ensure that any economic windfall is for the benefit of the state and its citizens and not for the holder.
- Dormancy period statutes determine when property is to be turned over to the state +-3yrs
- Once turned over to the state, the property is held in perpetuity on behalf of the rightful owner or that owner's heirs
- Monies received are deposited in when the General Fund and correspondingly refunds to an owner or their heirs are paid from the General Fund

What are some performance standards related to Unclaimed Property Laws?

- Approximately $2 million is received each year from holders of unclaimed property
- Approximately $800K to $1 million is returned each year to owners or their heirs
- Approximately 4,000 reports are filed each year by holders of unclaimed property
- Currently, the state is holding money for approximately 130,000 owners
- The total value of the property still unclaimed is approximately $16 million dollars
- Unclaimed Property Laws have been in existence since 1963

Does the Montana Constitution Mandate the Changes in §19 and §96 of HB182?

- Article VIII, §15 of the Montana Constitution states:
  - (1) Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.
- Unclaimed Property Laws are not in conflict with the constitution because they do not encumber, divert, reduce, or terminate public retirement system assets.
- Unclaimed Property Laws only come into play 3 years after the earliest of one of the following events has occurred:
  - the date of distribution or attempted distribution of the property
  - the date of the required distribution as stated in the plan or trust agreement governing the plan, or
  - the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty.

Summary

- The Department believes the change to the Unclaimed Property Law establishes bad precedent
- The Montana Constitution does not mandate the change
- There may be a negative impact on the General Fund due to the change

The Department respectfully requests that §19 be amended and §96 be struck in its entirety.

SENATE STATE ADMIN.
EXHIBIT NO. 7
DATE 3-5-99
BILL NO. HB182

AMENDMENT
HB182
VERSION: THIRD READING
DATE: 3-4-99
BY DEPARTMENT OF REVENUE

REASON: To clarify that the bill does not effect the Uniform Unclaimed Property Act

AMENDMENT:

1. Page 1, line 22
   Following: "19-19-205,"
   Strike: "70-9-803,"

2. Page 13, line 18
   Following: "Section 19."
   Strike: "Uniform Unclaimed Property Act and probate"
   Insert: "Probate"

3. Page 13, lines 18 through 21
   Strike: Subsection 1 in its entirety

4. Page 13, line 22
   Strike: "(2)"

5. Page 61, line 22 through Page 64, line 14
   Strike: Section 96 in it's entirety
   Renumber: Subsequent sections

MONTANA SENATE
1999 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE 3-5-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. JON TESTER	X		
SEN. JACK WELLS	X		
SEN. BILL WILSON	X		
SEN. DON HARGROVE, VICE CHAIRMAN	X		
SEN. MACK COLE, CHAIRMAN	X		

DATE 3-5-99

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY:

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Dave Senn	444-3376	TRS	HB182	✓	
Mike O'Connor	444-3459	PERS	HB182	✓	
Kelly Jenkins	444-2174	PERS	HB182	✓	
Hal Manson	458-9277	American Legion	SB362	✓	
Joe Kerwin	4-5326	Sec of State	HB 362 HR 505	✓ ✓	
Pat Clinch	458-5515	MSCPFP	HB182	✓	
Mary Bryson	2460	DOR	HB182		✓
Robert Throssell	442-0230	MT ASSN CLERK & RECORDERS	HB362	✓	
Mike Voeller	442-7284	Mont. Newspaper Assoc. Lee Newspapers of Mont.	HB616	✓	
George Qunell	442-9151	SELF	616	✓	
Riley Johnson	443-3797	MT Broadcasters Assn.	616	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE**, on March 17, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:
Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: None
Executive Action: HB 182, HB 412, HB 625

EXECUTIVE ACTION ON HB 182

Motion: **SEN. WILSON** moved that **HB 182 BE AMENDED.** The amendments included **HB018201.ADN EXHIBIT(sts60a01), HB018202.ADN EXHIBIT(sts60a02), HB018203.ADN** and **EXHIBIT(sts60a03).**

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 10:23}

David Niss, Legislative Staffer, explained Amendment 201, saying the difference between the three offered amendments would be in

paragraph three. The issue addressed the question of a beneficiary not being paid immediately, about who would retain the money (or the retirement benefit), what would happen while the money was being retained, and the disposition of the money if a beneficiary did not make claim to the benefit within five years. Subsection (3) stated that retirement benefits not claimed within five years after the member's death are forfeited and revert to the retirement system trust fund. The 202 version left the language off the amendment to that section. The 203 version changed the subsection, saying, "the retirement benefits not claimed within five years after the member's death must be transferred to the Department of Revenue and must be held by the Department, subject to the provisions of the Uniform Unclaimed Property Act.

SEN. HARGROVE asked **Mr. Niss** if all three amendments were agreeable with other laws in the Constitution. **Mr. Niss** said there was an issue because retirement system benefits, unlike money held pursuant to the Uniform Unclaimed Property Act, is held pursuant to a Constitutional provision. One concerning investments would be Article 8, Section 13; another was Article 8, Section 15. Section 13, Subsection 3 addressed retirement benefits specifically, requiring the creation of the Unified Investment Program. He said it was important for the purposes of these amendments and how and by whom the benefit was maintained. The Board of Investments is run subject to this Constitutional provision for a large sum of money in addition to retirement benefits. Article 8, Section 13 referring to retirement benefits states, "Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private, corporate capital stock."

SEN. HARGROVE further questioned the definition of "public retirement assets", and if they would cease to be retirement benefits five years after death and become inactive. **Mr. Niss** was unaware of any definition, nor any limitation in current retirement law in Title 19 that after a certain number of years something else would happen to the money. He said that this entire issue had arisen because a provision in the Uniform Unclaimed Property Act in Title 70, different from retirement law, that said certain unpaid retirement benefits are presumed to have been abandoned. There was a provision in the Constitution that indicated that the money would forever be part of a retirement benefit and governed by Title 19, pursuant to the Constitution, and also the provision of the Unclaimed Property Act that said it was presumed abandoned. Section 15, Section 2

of Article 8 of the Constitution concerning public retirement system assets reads,"Public retirement systems shall be funded on an actuarial sound basis. Assets including income and actuarially required contributions shall not be encumbered, diverted, reduced or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses. The governing boards of Public Retirement Systems shall administer the system including actuarial determinations as fiduciaries of the system participants and their beneficiaries." The two sections of Article 8 say the benefit is to be held and invested, including private corporate capital stock and is to be managed by the Public Board Retirement boards which oversee the particular trust fund vs. the statutory language in Title 70 in the Uniform Unclaimed Property Act. This had led the Department of Revenue to say that the Uniform Unclaimed Property Act presumed that the money was abandoned and that they had the obligation to manage it pursuant to that title, not the Constitutional provisions in Title 19.

SEN. HARGROVE asked if Amendment 202 allowed the Retirement System to keep the money but negotiate with the Department of Revenue to dispose of it as unclaimed property. **Mr. Niss** answered in the affirmative.

Mike O'Connor, Executive Director of the Public Employees Retirement System, said they had been directed by the committee to negotiate their differences, and had agreed to Amendment 201 with the exception of Subsection 3. They wanted to broaden the section to say instead of, "for the purpose of identifying and locating beneficiaries," inserting, "for the purpose of administering the retirement systems." It would have also carried over to Page 2, Section 6, Subsection 2.

SEN. HARGROVE asked if it was done to make it more consistent with the Constitution. **Mr. O'Connor** said it would broaden it so it would not focus entirely on locating beneficiaries, but other agreements could be entered into. Also, it would tie into the Constitution, he said.

SEN. COLE asked if Page 2 was the same, he answered that Page 2 was the teachers' section, so the same wording would have to be changed as well.

SEN. HARGROVE commented on the differences that centered on whether the money stayed in the Retirement System or went out to be disposed of. **Mr. O'Connor** stated that in Amendment 202, the Retirement System assets would have to stay with the trust fund because of the Constitution. They have a memo of understanding

with the Department of Revenue and **David Senn, Executive Director, Teachers' Retirement System.** PERS would keep the money in a trust fund, then on an annual basis they would provide them with the names of the people they were looking for.

SEN. WELLS asked if the wording change in Section 3 would mean the funds would stay in the trust fund and the Dept. of Revenue would agree with PERS passing on the names of people to them. **Mr. O'Connor** said they had agreed to it.

SEN. WELLS asked which of the amendments **Mary Bryson, Director, Department of Revenue** preferred. **Ms. Bryson** stated the Department would prefer 202 that left out where the money goes. She said it was a policy decision on whether or not the legislature would accept Subsection 3. This section basically said that after five years the money would be considered unclaimed property so it would revert. An individual beneficiary would be unable to lay claim to it. The memo of understanding would clarify that PERS would keep the money and provide the Dept. of Revenue with the information. Asked further if the memorandum was tied into statute, **Ms. Bryson** said a policy decision had to be made by the legislature as to whether retirement benefits that have not been claimed become abandoned property or become the assets of PERS and are no longer subject to being claimed. The Dept. of Revenue would also accept versions 201 and 203, she said, but preferred 202.

SEN. HARGROVE asked her if the five years was consistent with other items in the Unclaimed Property Act. **Ms. Bryson** told the committee that the act specified three years after the date of distribution or issuance, the property was determined to be unclaimed property and turned over to the state. The five-year proposal came from statues that exist with the teachers' retirement, she thought. The Dept. of Revenue retains the assets in perpetuity under unclaimed property laws and was always able to be claimed. Under the new provision in Amendment 1, however, it would be unable to be claimed after five years.

SEN. TESTER asked if under current law any time limitations were made on benefits. **Kelly Jenkins, General Council, Public Employees' Retirement Board (PERB)** stated that the teachers' system contained the language for the five-year version. Discussion follows with **Mr. Jenkins** about a period of time for claims to be made and a practical amount of time for retaining records.

SEN. HARGROVE asked **Mr. Jenkins** if the part of the paragraph about the disposal of the money was important. **Mr. Jenkins** replied that it was important for Constitutional purposes and

further stated that under federal laws, an employer may not take those funds out to do whatever they wish. The purposes were limited and were to be spent for benefits or the administration of the system. When the state takes the money over, they are taking money that belongs to the beneficiary that was put in by the beneficiary, state or local governments.

SEN. HARGROVE further asked if the Unclaimed Property Division was doing a search during the five years? **Mr. O'Connor** said the provision wasn't for the active person, but someone perhaps in a rest home who dies on the second of the month and has money for those two days owed. The beneficiary probably will not want to do the paperwork for the small amount of money and may never put claim to the money.

SEN. HARGROVE then asked when an unclaimed retirement benefit was subject to the provisions of the Uniform Unclaimed Property Act? **Mr. O'Connor** answered, "three years."

Mr. Niss, stated that after listening to testimony and reading through Section 13 and 15 of Article 8, at least one of the differences in how it would be handled by PERS vs. how it would be handled by the Department of Revenue, would be that PERS would hold it forever. Also, the money could be invested in corporate stock. The difference would be between whatever the trust fund, (referred to in the Uniform Unclaimed Property Act) is earning vs. corporate stock.

SEN. HARGROVE suggested that under those circumstances, the Department of Revenue would never be involved. **Mr. Jenkins** said the difference is 20 percent vs. 5-8 percent.

SEN. HARGROVE then asked **Mr. Jenkins** if there was any effort made on behalf of PERS to find people? **Mr. Jenkins** answered in the affirmative, saying they spent quite a bit of time trying to find people and that new provisions in the qualification bill that just passed that would improve that process and decrease the number of people that had outstanding accounts because they would be able to pay out small amounts without a claim being made by the individual. The payout would be automatically done. This had been one of the problems before, because people did not bother with the claims and they had records dating back 45 years.

SEN. HARGROVE asked about the first paragraph in all three versions. He asked if that was put in there to say that everyone could agree to a memo of understanding with the DOR so they could help out? **Mr. Jenkins** said, "yes." In a further comment he said where it said, "federal or state agencies," in order to make it all encompassing, so they weren't excluding anyone in broader

language about administering retirement systems, they would prefer it to read, "federal, state or political subdivision agencies."

SEN. WELLS asked **Mr. O'Connor** if he'd stated that after 1 to 15 years, a beneficiary had made claim? Hearing an affirmative answer, he further inquired whether sub-paragraph 3 the benefits not paid in five years are forfeited and revert to the trust fund. That would have indicated to him that six years later a person could not lay claim. **Mr. O'Connor** said that was true.

SEN. WELLS said Amendment 1 says they forfeit after five years, which I want to clarify. Is there a difference between the other systems and the teachers? **Mr. O'Connor** stated, it is five years after the death, so a person could be gone for 15 to 25 years.

SEN. WELLS asked if this was the case where they were gone for 15 years, then died, and someone came and laid claim? **David Senn** answered the question saying that the example was not a debt, but an individual who had left because of a mental disability, and had come back himself several years later. The scenario could have been a death and it would have been five years after the death of the member.

SEN. WELLS stated, that sounds like a definite difference between that and DOR. The Department of Revenue says that unclaimed property is held in perpetuity and there is no forfeiture. Therefore if we went with number Amendment 1 versus Amendment 3, where the money went over to the Department, the money would not be forfeited, but invested differently.

Ms. Bryson said, that is why we like Amendment 2. **SEN. WELLS** said, Amendment 2 allows them to keep it and invest it, and lets you locate the people.

SEN. COLE asked, wouldn't that be in Amendment 3, rather than Amendment 2? **SEN. WELLS** said, Amendment 2 does not where they go, but their memo of understanding would say it.

Ms. Bryson explained, the difference between Amendment 2 and Amendment 3 is Amendment 3 requires them to transfer the money to the Department, where Amendment 2 allows them to retain the money in the Retirement System and we can enter into that agreement.

SEN. COLE said, Amendment 2 allows the money to stays with PERS subject to the agreement. **SEN. COLE** asked **Mr. O'Connor** what his feelings were on the three Amendments. **Mr. O'Connor** said, we cannot live with Amendment 3. We are trying to be consistent with the other retirement systems, in that, five years after the

death of the member the money will revert. The difference between Amendment 1 and Amendment 2 is that it takes out the five years, which is already in the Teachers' Retirement System.

SEN. TESTER asked if # 1 also dictated that the funds would also revert to the system's trust fund regardless of an agreement? **Mr. O'Connor** answers that it is silent where the money will be. He says that it addresses the specific situation where five years after death it reverts to the trust fund, but in all other situations, it didn't.

{Tape : 1; Side : B; Approx. Time Counter : 11:03}

SEN. COLE inquired about money in the fund five years after the member's death and if it would be forfeited to the PERS? What would happen if the beneficiary came in seven years later? **Mr. O'Connor** answered that the money would be gone.

SEN. WELLS asked **Mr. O'Connor** what would happen in the same situation now? He answers that the funds continue to be in the trust fund.

SEN. WELLS asked if he wanted the change to limit it to five years for purposes of administration or record-keeping, **Mr. O'Connor** said it would ease the administration of the retirement plan. They kept records for individuals, he said, sometimes 30 years for a career and retirement records, perhaps for 40-50 years, making their record as long as 80 years. A five-year termination would be best, he said.

SEN. HARGROVE asks counsel if MCA provides closure if someone lives to 100? **Mr. O'Connor,** said they have several dozen people on retirement today over 100 years old and they would likely be perturbed to be declared dead.

SEN. TESTER asked if there had been a time when someone died and after five years the beneficiary came for benefits? **Mr. O'Connor** said only very rarely. They check death records on a monthly basis, so the beneficiaries had been notified within two months. The small dollar amounts were the problem.

Mr. O'Connor stated that the memo of understanding would help them work together. The people would be located then and benefits paid, instead of 30 to 40 years later.

SEN. HARGROVE said the negative aspects to version # 1 was even though infrequent, funds would be forfeited. Also, as long as the files were active, the retirement system would have to administer the fund. On amendment # 3 the money isn't invested

constitutionally. The drawback on item # 2 would be trusting the bureaucracy. If the change were made, "for the purpose of administering the retirement system," they could include things like the maintenance of files in their agreements or even closure. He felt comfortable that the executive branch would make better decisions with # 2.

SEN. TESTER brought forth the question on whether the two parties would have a falling out later and dissolve the understanding. The money should be left in the retirement account. In #1, it clearly states that it reverts back to the retirement system trust fund.

SEN. WELLS said, I feel similar to **SEN. TESTER.** I don't feel poorly about the benefits that are unclaimed five years after the death reverting back to the fund. As we heard, it doesn't happen very often and it doesn't appear that there would be a large some of money involved. The amount of money handled probably does not justify the cost of administration and record keeping. The Teachers' Retirement System already does this. If we went with #2, I don't think they could take care of those benefits in with a memo of understanding. Having a memo of understanding with the other agencies is not going to give them the authority to do anything different from what they do now. The only thing that gives them authority is a change of statute that we administer. I don't think it would be possible to forfeit funds after five years with a memo of understanding, but they would be able to negotiate how they looked for lost beneficiaries or retirees. I like #1 better because it ties it down and it doesn't leave room for someone to change their mind or people reading the law differently.

Motion: SEN. WELLS moves to add wording as stated: "the board may enter into agreements with federal, state or political subdivision agencies for the purposes of administering the retirement system," which would be included in whatever version is passed out of committee.

Vote: Motion passed unanimously 5-0.

Motion: SEN. WELLS moved that **AMENDMENT HB018201.adn BE ADOPTED.**

Discussion: SEN. HARGROVE offered opposition saying flexibility for the people in the executive branch was important to make choices they must make. He said he was uncomfortable with forfeiture, but felt they could make better day-to-day decisions.

SEN. COLE also expressed opposition to the motion.

Vote: A roll call vote was taken. Motion **carried 3-2 with SEN. COLE and SEN. HARGROVE voting no.**

Motion/Vote: **SEN. WELLS** moved that **HB 182 BE CONCURRED IN AS AMENDED. Motion passed unanimously 5-0.**

EXECUTIVE ACTION ON HB 412

Davis Niss explained the amendments in conjunction with **SEN. HARGROVE, EXHIBIT(sts60a04) HB041201.adn. Mr. Niss** had questions about the word, "findings" in the first paragraph. They had agreed to change the language. Change # 2 addresses maps for use by the state to include maps for public use. Changes in paragraph #3 and #4 arose during the hearing on the bill and are the most important because they had received testimony on them. At least one witness said the geological survey is not the body that the request for changes in federal maps is addressed to, rather the board on geographic names, he said.

Motion/Vote: **SEN. HARGROVE** moved that **AMENDMENT HB041201.adn BE ADOPTED. Motion passed unanimously 5-0.**

Motion: **SEN. WILSON** moved that **HB 412 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. WELLS could not support this. There were many inappropriate and derogatory names throughout the state, but that they contained important history for the time. He considered "squaw" only to mean an Indian woman, and never thought it was used in a derogatory fashion, until someone else pointed out that it was unacceptable. He suggested that it would then be questionable to use other terms such as "broad," or "crazy."

SEN. HARGROVE commented on language changes in other bills. He said **REP. CAROL JUNEAU** had done a good job of this bill and that it would not cost anyone any money. The changes would be made over time. The word, "squaw," obviously made the 30 people who came and testified on the bill unhappy, he said.

SEN. TESTER also commented on the usage of words, saying, "squaw," was not used in a complimentary fashion around the state. If changing the words made the people feel better, more accepted or less condemned, he favored it.

SEN. WILSON supported the bill, but said he anticipated an increase in vandalism.

SENATE STATE ADMIN.
EXHIBIT NO. 1
DATE 3-17-99
BILL NO HB182

Amendments to House Bill No. 182
3rd Reading Copy

Requested by Senator Mack Cole

For the Senate State Administration Committee

Prepared by David Niss
March 17, 1999 (9:37AM)

1. Title, lines 8 and 9.
Strike: "PROVIDING" on line 8 through "ACCOUNT;" on line 9

2. Title, line 22.
Strike: "70-9-803"
Insert: "19-20-502"

3. Page 9, line 30.
Following: "board."
Insert: "The board may enter into agreements with federal or state agencies for the purpose of identifying and locating beneficiaries.

(3) Retirement benefits not claimed within 5 years after the members death are forfeited and revert to the retirement system trust fund."

4. Page 13, line 18.
Strike: **"Uniform Unclaimed Property Act and probate"**
Insert: **"Probate"**

5. Page 13, lines 19 through 22.
Strike: "(1)" on line 19 through "(2)" on line 22

6. Page 61, line 22 through page 64, line 14.
Strike: section 96 in its entirety
Insert: **"Section 96.** Section 19-20-502, MCA, is amended to read:

"19-20-502. Restrictions on use of ~~moneys~~ money. (1) No member of the retirement board or any of its employees may:

(a) have an interest, direct or indirect, in the gains or profits of any investment of ~~moneys~~ money of the retirement system, except as ~~herein~~ provided in this section;

(b) directly or indirectly, for ~~himself~~ the member or as an agent, in any manner use the ~~moneys~~ money or deposits of the retirement system except to make ~~such~~ current and necessary expenditures as are authorized by the retirement board;

(c) become an endorser or surety or in any manner an obligor for ~~moneys~~ money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system. The board may enter into agreements with federal or state agencies for the purpose of identifying and locating beneficiaries.""

7. Page 67.
Following: line 30
Insert: "(2) [Section 19] is intended to be codified as an integral part of Title 19, chapter 20, part 5, and the provisions of Title 19, chapter 20, part 5, apply to [section 19]."
Renumber: subsequent subsections

8. Page 70, line 25.
Strike: "Sections"
Insert: "Section"
Strike: "and 96"
Strike: "apply"
Insert: "applies"

- END -

UNEDITED

SENATE STATE ADMIN.
EXHIBIT NO. 2
DATE 3-17-99
BILL NO. HB182

Amendments to House Bill No. 182
3rd Reading Copy

Requested by Senator Mack Cole

For the Senate State Administration Committee

Prepared by David Niss
March 17, 1999 (9:32AM)

1. Title, lines 8 and 9.
Strike: "PROVIDING" on line 8 through "ACCOUNT;" on line 9

2. Title, line 22.
Strike: "70-9-803"
Insert: "19-20-502"

3. Page 9, line 30.
Following: "board."
Insert: "The board may enter into agreements with federal or state agencies for the purpose of identifying and locating beneficiaries."

4. Page 13, line 18.
Strike: **"Uniform Unclaimed Property Act and probate"**
Insert: **"Probate"**

5. Page 13, lines 19 through 22.
Strike: "(1)" on line 19 through "(2)" on line 22

6. Page 61, line 22 through page 64, line 14.
Strike: section 96 in its entirety
Insert: **"Section 96.** Section 19-20-502, MCA, is amended to read:

"19-20-502. Restrictions on use of ~~moneys~~ money. (1) No member of the retirement board or any of its employees may:

(a) have an interest, direct or indirect, in the gains or profits of any investment of ~~moneys~~ money of the retirement system, except as ~~herein~~ provided in this section;

(b) directly or indirectly, for ~~himself~~ the member or as an agent, in any manner use the ~~moneys~~ money or deposits of the retirement system except to make ~~such~~ current and necessary

expenditures as are authorized by the retirement board;

(c) become an endorser or surety or in any manner an obligor for ~~moneys~~ money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system. The board may enter into agreements with federal or state agencies for the purpose of identifying and locating beneficiaries.""

7. Page 67.
Following: line 30
Insert: "(2) [Section 19] is intended to be codified as an integral part of Title 19, chapter 20, part 5, and the provisions of Title 19, chapter 20, part 5, apply to [section 19]."
Renumber: subsequent subsections

8. Page 70, line 25.
Strike: "Sections"
Insert: "Section"
Strike: "and 96"
Strike: "apply"
Insert: "applies"

- END -

UNEDITED

SENATE STATE ADMIN.
EXHIBIT NO. 3
DATE 3-17-99
BILL NO. HB182

Amendments to House Bill No. 182
3rd Reading Copy

Requested by Senator Mack Cole

For the Senate State Administration Committee

Prepared by David Niss
March 17, 1999 (9:44AM)

1. Title, lines 8 and 9.
Strike: "PROVIDING" on line 8 through "ACCOUNT;" on line 9

2. Title, line 22.
Strike: "70-9-803"
Insert: "19-20-502"

3. Page 9, line 30.
Following: "board."
Insert: "The board may enter into agreements with federal or state agencies for the purpose of identifying and locating beneficiaries.

(3) Retirement benefits not claimed within 5 years after the members death must be transferred to the department of revenue and must be held by the department subject to the provisions of the Uniform Unclaimed Property Act."

4. Page 13, line 18.
Strike: "Uniform Unclaimed Property Act and probate"
Insert: "Probate"

5. Page 13, lines 19 through 22.
Strike: "(1)" on line 19 through "(2)" on line 22

6. Page 61, line 22 through page 64, line 14.
Strike: section 96 in its entirety
Insert: "Section 96. Section 19-20-502, MCA, is amended to read:

"19-20-502. Restrictions on use of ~~moneys~~ money. (1) No member of the retirement board or any of its employees may:

(a) have an interest, direct or indirect, in the gains or profits of any investment of ~~moneys~~ money of the retirement

system, except as ~~herein~~ provided in this section;

(b) directly or indirectly, for ~~himself~~ the member or as an agent, in any manner use the ~~moneys~~ money or deposits of the retirement system except to make ~~such~~ current and necessary expenditures as are authorized by the retirement board;

(c) become an endorser or surety or in any manner an obligor for ~~moneys~~ money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system. The board may enter into agreements with federal or state agencies for the purpose of identifying and locating beneficiaries.""

7. Page 67.
Following: line 30
Insert: "(2) [Section 19] is intended to be codified as an integral part of Title 19, chapter 20, part 5, and the provisions of Title 19, chapter 20, part 5, apply to [section 19]."
Renumber: subsequent subsections

8. Page 70, line 25.
Strike: "Sections"
Insert: "Section"
Strike: "and 96"
Strike: "apply"
Insert: "applies"

- END -

MONTANA SENATE
1999 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL DATE March 17, 1999

NAME	PRESENT	ABSENT	EXCUSED
SEN. JON TESTER	X		
SEN. JACK WELLS	X		
SEN. BILL WILSON	X		
SEN. DON HARGROVE, VICE CHAIRMAN	X		
SEN. MACK COLE, CHAIRMAN	X		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **State Administration** report that **House Bill 182** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Senator Mack Cole, Chair*

To be carried by Senator Don Hargrove

And, that such amendments read:

1. Title, lines 8 and 9.
Strike: "PROVIDING" on line 8 through "ACCOUNT;" on line 9

2. Title, line 22.
Strike: "70-9-803"
Insert: "19-20-502"

3. Page 9, line 30.
Following: "board."
Insert: "The board may enter into agreements with federal agencies, political subdivisions, or state agencies for the purpose of administering the retirement system.

(3) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund."

4. Page 13, line 18.
Strike: "Uniform Unclaimed Property Act and probate"
Insert: "Probate"

Committee Vote:
Yes 5, No 0.

601550SC.sjo

5. Page 13, lines 19 through 22.
Strike: "(1)" on line 19 through "(2)" on line 22

6. Page 61, line 22 through page 64, line 14.
Strike: section 96 in its entirety
Insert: "**Section 96.** Section 19-20-502, MCA, is amended to read:

"**19-20-502. Restrictions on use of ~~moneys~~ money.** (1) No member of the retirement board or any of its employees may:

(a) have an interest, direct or indirect, in the gains or profits of any investment of ~~moneys~~ money of the retirement system, except as ~~herein~~ provided in this section;

(b) directly or indirectly, for ~~himself~~ the member or as an agent, in any manner use the ~~moneys~~ money or deposits of the retirement system except to make ~~such~~ current and necessary expenditures as are authorized by the retirement board;

(c) become an endorser or surety or in any manner an obligor for ~~moneys~~ money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system. The board may enter into agreements with federal agencies, political subdivisions, or state agencies for the purpose of administering the retirement system.""

7. Page 67.
Following: line 30
Insert: "(2) [Section 19] is intended to be codified as an integral part of Title 19, chapter 20, part 5, and the provisions of Title 19, chapter 20, part 5, apply to [section 19]."
Renumber: subsequent subsections

8. Page 70, line 25.
Strike: "Sections"
Insert: "Section"
Strike: "and 96"
Strike: "apply"
Insert: "applies"

- END -

MONTANA SENATE
1999 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE 3-17-99 BILL NO. HB 182 NUMBER 1

MOTION: Motion that HB018201.adm Be Adopted

NAME	AYE	NO
SEN. JON TESTER	X	
SEN. JACK WELLS	X	
SEN. BILL WILSON	X	
SEN. DON HARGROVE, VICE CHAIRMAN		X
SEN. MACK COLE, CHAIRMAN		X

3-2